BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service	))))	**Case No. ER-2014-0370** Tariff Nos. YE-2015-0194 & YE-2015-0195

STAFF'S REPLY AND TRUE-UP BRIEF

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COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its reply and true-up brief, states:

Like its initial brief, this brief follows the order of the issues as listed in the list of issues, with reply argument preceding true-up argument. The most recent value of differences between the parties on contested issues are in Staff's revised true-up reconciliation marked Exhibit 260 and admitted into evidence during the true-up hearing on Monday, July 20, 2015.

Reply

Rather than replying to every argument other party's make in their initial briefs, having presented and argued its positions in its initial brief, Staff is limiting its replies to where it views further explanation will most aid the Commission in its deliberations.

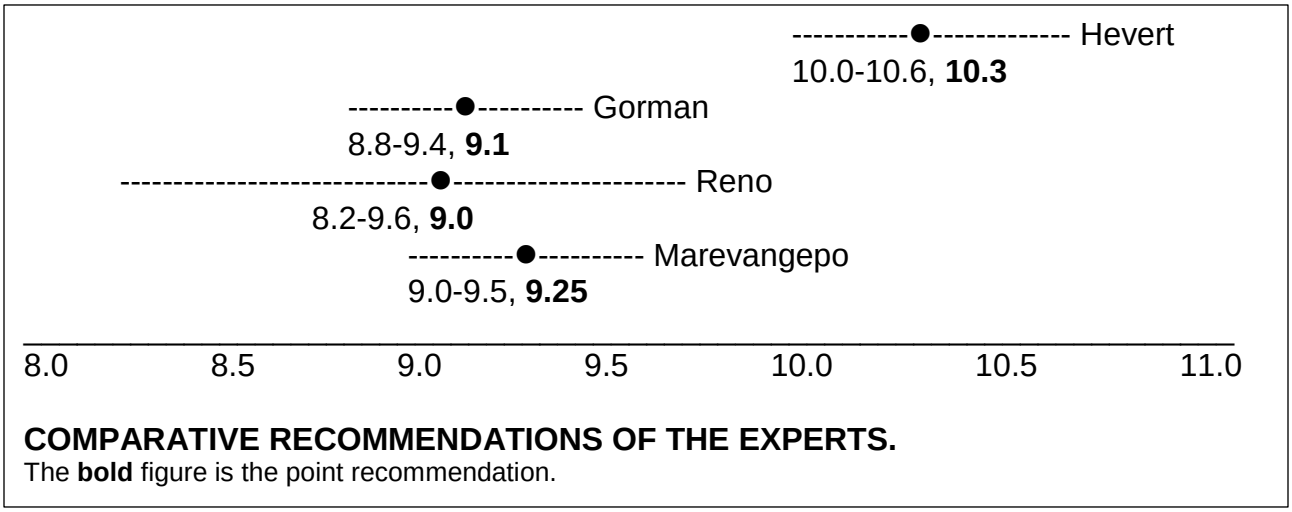
I. *Cost of Capital – Reply to KCPL:*

1. Return on Common Equity:

Introduction:

Staff disagrees sharply with KCPL with respect to the appropriate authorized return on common equity ("ROE"). Staff's position is similar to that sponsored by

MIEC's expert witness, Michael Gorman, and the U.S. DOE's expert witness, Maureen Reno. The similarity of these three recommendations is best presented graphically:



COMPARATIVE RECOMMENDATIONS OF THE EXPERTS.
The **bold** figure is the point recommendation.

The recommendation of KCPL's expert witness, Robert Hevert, by contrast is clearly revealed to be an outlier which should be discarded.

What's wrong with KCPL's Brief?

KCPL's brief is marred by both factual errors and mischaracterizations of the evidence. For example, KCPL asserts, "Staff proposes low-end recommendations of 6.28% to 8.28%, far outside any zone of reasonableness and unlawfully confiscatory. See Ex. 200, Staff Report at 53 (8.18-8.28%), 55 (6.28-7.46%)."[1] In fact, Staff proposed no such thing. The low end of Staff's recommendation is 9.00.[2] Staff reported its findings regarding the current cost of equity estimated, compared these estimates to its findings in the 2012 rate case, and estimated that the cost of equity had declined sufficient to justify the Commission lowering KCPL's allowed ROE to 9.25% from its

[1] *KCPL initial brief,* p. 3.

[2] *Staff initial brief,* p. 6; *Staff revenue requirement cost of service report,* p. 19.

current level at 9.70%. Staff's approach in this case was no different than Staff's approach in the recent Ameren Missouri rate case, Case No. ER-2014-0258. In fact, Staff's updated analysis of the cost of capital environment during the KCPL rate case supported an even larger decline in the cost of common equity than Staff had just estimated four months prior in Case No. ER-2014-0258.

Another example of how KCPL's *Brief* is unreliable: KCPL repeatedly cites to the figures in Mr. Hevert's direct testimony.[3] KCPL's attorney is evidently unaware of the fact that Mr. Hevert updated all of his analyses in his rebuttal testimony.[4] The figures in his direct testimony were thus discarded.

KCPL misrepresents the testimony and analyses of Staff witness Marevangepo.[5] Again, like all of the other analysts, including Mr. Hevert, Mr. Marevangepo reports some results that, in the exercise of his professional judgment, he rejected.[6]

KCPL asserts that a cost of equity estimate of 8.18% to 8.28% "would likely be viewed as confiscatory in any context."[7] Perhaps that's so; but the question is an irrelevancy intended to mislead the Commission because Staff did not recommend the allowed ROE be set based on absolute cost of equity estimates of 8.18% to 8.28%.

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[3] *E.g., KCPL initial brief,* p. 7 (Table 3), p. 9 (Tables 6 and 7), and p. 10 (Table 8).

[4] Hevert rebuttal, p. 2: "My Rebuttal Testimony also provides updated analytical results regarding the Company's Cost of Equity. My analyses and conclusions are supported by the data presented in Schedules RBH-12 through RBH-30, which have been prepared by me or under my direction" (footnotes omitted).

[5] *KCPL initial brief,* pp. 10-11.

[6] Tr. 9:217.

[7] *KCPL initial brief,* p. 11.

Staff recommended a downward adjustment to the Commission's last allowed ROE of 9.70% for KCPL in its 2012 rate case.

KCPL fundamentally misrepresents Staff's methodology. KCPL asserts:

> Apparently frustrated by either extraordinarily low ROEs obtained through its models or ROEs which Staff viewed as too high (based on other commissions' authorized returns), Staff picked a relative middle ground, employing its subjective judgment. This resulted in an ROE recommendation of 9.25%, based on a range of 9.0-9.5%. See Ex. 200, Staff Report at 58.[8]

Staff's methodology is based on a determination of the degree to which the market-required return has declined since the last time the Commission set KCPL's ROE.[9] Staff explained exactly what it did in its *Report:*

> Staff estimated KCPL's cost of common equity through a comparable company cost-of-equity analysis of a broader proxy group and a more refined proxy group using the DCF method. Staff also compared the new proxy groups and the proxy group in KCPL's last rate case to estimate the relative change in the cost of equity since 2012. Additionally, Staff used a CAPM analysis and a survey of other indicators as a check of the reasonableness of its recommendations.[10]

Contrary to expectations raised by Mr. Zobrist's mischaracterization, there is nothing of frustration in the excerpted paragraph above. As Mr. Marevangepo further explained, "Staff believes it can more effectively serve the Commission in its deliberation of the evidence by discussing Staff's analytical results of the existing low capital cost

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[8] *KCPL initial brief,* p. 12.

[9] *See* Marevangepo surrebuttal, pp. 1-2: "Despite the Commission's recent 9.53% authorized ROE for Ameren Missouri (Case No. ER-2014-0258); and evidence presented by Staff and other ROR witnesses in this case that justifies a reduction in KCPL's last allowed ROE of 9.70%, Mr. Hevert maintains his position that a 10.30% allowed ROE is fair and reasonable for KCPL in this case."

[10] *Staff revenue requirement cost of service report,* pp. 37-38. Elsewhere, Staff stated: "Staff's recommendation to reduce KCPL's recent authorized ROE (9.70%) to 9.25% is based on Staff's conservative estimate of an approximate 25 – 75 basis points decline in the COE since 2012." Marevangepo surrebuttal, p. 10.

environment for regulated utilities as compared to the 2012 cost of capital environment."[11] Staff's logic is simple: if the Commission believes that 9.7 was appropriate in 2012 given the market conditions prevailing at that time, then the authorized ROE should be set lower today in view of how market conditions have changed. As Mr. Marevangepo pointed out, "Staff's analysis above clearly shows that the current (1) utility COE, (2) utility debt cost and (3) total utility capital costs are still below those experienced in 2012 despite the mild increase during the short period Mr. Hevert attempts to magnify."[12] Mr. Marevangepo went on:

> While Staff's multi-stage DCF analysis implied a COE decline as high as approximately 100 basis points, Staff conservatively recommended an approximate 25 -75 basis points reduction to the 9.70% authorized ROE that was ordered in KCPL's last rate case (ER-2012-0175). As it stands, Staff did not abandon its multi-stage DCF results as Mr. Hevert suggests . . . . Staff in fact used the multi-stage DCF results as the basis for quantifying the relative decline in KCPL's COE since 2012, which supports Staff's recommendation to lower KCPL's allowed ROE to 9.25%.[13]

What's wrong with KCPL's Recommendation?

In its *Initial Brief,* Staff explained that Mr. Hevert has again produced an inflated ROE recommendation by using inputs that are too high.[14] Only some of the inputs are subject to this sort of manipulation. For the Discounted Cash Flow ("DCF") model, the critical input is the growth rate;[15] and, indeed, Staff demonstrated that Mr. Hevert used

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[11] Marevangepo surrebuttal, p. 2.

[12] Marevangepo surrebuttal, p. 8.

[13] *Id.*

[14] By "again" Staff is referring to Mr. Hevert's analysis in the recent Ameren Missouri rate case, ER-2014-0258. Staff discussed the shortcomings of Mr. Hevert's analyses on pp. 19-27 of its i*nitial brief.*

[15] *Staff initial brief, p. 23.*

higher growth rates than any of the other three analysts.[16] Mr. Gorman and Ms. Reno also commented on Mr. Hevert's overly high growth rates.[17] For the Capital Asset Pricing Model ("CAPM") and the Risk Premium method, the critical input is the market risk premium or risk premium.[18] Again, Staff showed that Mr. Hevert used higher risk premia than any of the other three analysts.[19] Again, both Mr. Gorman and Ms. Reno commented on Mr. Hevert's overly high risk premia.[20]

The mathematical underpinnings of cost-of-equity estimation are not complex. Each model is simply a formula by which, using carefully selected inputs, a cost of equity is estimated. Like any formula, the higher the inputs selected by the analyst, the higher the result produced. It's just that simple.

What's the right answer?

The Commission's determination of an authorized ROE for KCPL must be guided primarily by its recent award of 9.53% to Ameren Missouri. In other words, it is not the ROEs authorized by other commissions in other states that the Commission should look to for guidance, but the ROE it authorized for Ameren Missouri a few months ago. That ROE was 9.53%. The ROE awarded to KCPL in this case *must* make sense in view of the ROE awarded to Ameren Missouri in that case. So, 9.53% is the Commission's lodestar.

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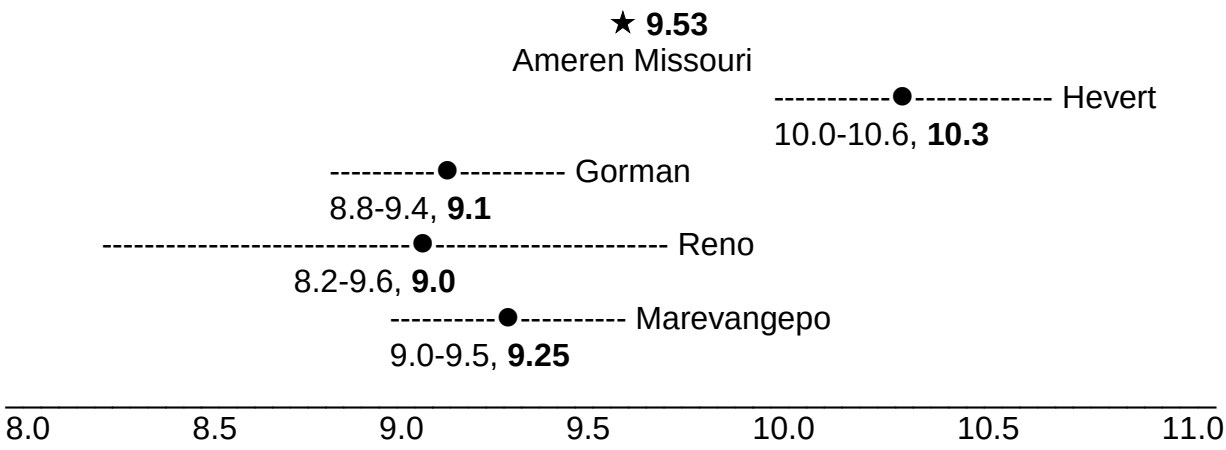
[16] *Staff initial brief,* pp. 21-23 and Table Three.

[17] Ex, 551, Gorman rebuttal, pp. 6-7.

[18] *Staff's Brief,* pp. 25-27 and Table Four.

[19] *Id.*

[20] Ex. 551, Gorman rebuttal, pp. 17, 20.



COMPARISON OF THE EXPERTS TO THE AMEREN MISSOURI ROE.
The **bold** figure is the point recommendation.

The *low* end of Mr. Hevert's recommendation (10.0%) is 47 basis points *higher* than the ROE that this Commission awarded to Ameren Missouri. The ROE awarded to Ameren Missouri is outside of the high end of Mr. Gorman's recommended range (8.8%-9.4%); just outside of the high end of Staff's recommended range (9.0%-9.5%); and within Ms. Reno's recommended range (8.2%-9.6%).

The "zone of reasonableness" in this case is the range of forty basis points from 9.0% to 9.4% which is the overlap of Mr. Marevangepo's recommendation with that of Mr. Gorman and that of Ms. Reno.[21] The weight of the expert opinion adduced in this case puts the answer somewhere in that 40-point zone. The point recommendations of Staff, Mr. Gorman and Ms. Reno are all within that zone of reasonableness. Staff urges

[21] "The United States Supreme Court has instructed the judiciary not to interfere when the Commission's rate is within the zone of reasonableness. *See* ***In re Permian Basin Area Rate Cases,*** 390 U.S. 747, 767, 88 S.Ct. 1344, 20 L.Ed.2d 312 (1968) ("courts are without authority to set aside any rate selected by the Commission [that] is within a 'zone of reasonableness' ")." ***State ex rel. Public Counsel v. Public Service Com'n,*** 274 S.W.3d 569, 574 (Mo. App., W.D. 2009).

the Commission to authorize a ROE of 9.25% for KCPL as recommended by Staff's expert witness, Zephania Marevangepo.

What about if the Commission authorizes a FAC?

If the Commission grants a Fuel Adjustment Clause ("FAC") and other "regulatory ratchets"[22] to KCPL, then a *downward adjustment* to its ROE is appropriate because KCPL will no longer have fuel risk to manage; its fuel risk will pass to its customers. How much of a downward adjustment? Toward the low end of the zone of reasonableness described above.

If the Commission doesn't grant a FAC, then no upward adjustment is needed to the allowed ROE. This may seem asymmetric, but it's not, because in return for not agreeing to seek a FAC through June 1, 2015, KCPL received extraordinary ratemaking treatment during the period of its Alternative Regulatory Plan in Case No. EO-2005-0329. This was the consideration the parties to that agreement required to allow for this extraordinary ratemaking treatment, which included but was not limited to a cumulative amount of $183.4 million in higher rates from ratepayers during the period of the regulatory plan.

2. Capital Structure and Cost of Debt:

Staff concurs with KCPL that the appropriate ratemaking capital structure is Great Plains Energy's consolidated capital structure as of the true-up date in this case and that short-term debt should be excluded from the ratemaking capital structure.

Kevin A. Thompson.

[22] That is, trackers.

II. Fuel Adjustment Clause

Single-Issue Rate Making Mechanisms

KCPL addresses fuel adjustment clause ("FAC") issues under both sections III and IV of its initial brief. Therefore this section of Staff's reply/true-up brief addresses certain points from both of those sections of KCPL's brief. The Commission should be aware that in both sections of KCPL's brief KCPL makes numerous statements which, at first blush, appear to be statements of either law or fact, *without any citation to supporting law or the evidentiary record*. The Commission should, therefore, be careful not to accept such unsupported statements as accurate representations of either law or fact. KCPL's approach throughout this case and in its brief brings to mind the following quote from philosopher Richard M. Rorty: "Truth is what your contemporaries let you get away with." The Commission must not let KCPL get away with creating the "truth."

Under its fuel adjustment clause discussion in section III of its initial brief, on page 31, KCPL refers to what it describes as the "new energy environment created by SPP's Integrated Marketplace ("IM")" and claims that its "opportunity to earn its authorized return is dependent upon an understanding that it sells all of its power into the SPP IM and purchases all of its power out of the SPP IM." However, in the Commission's decisions in both the recent *Ameren Missouri*[23] and *Empire*[24] electric rate

[23] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service,* Case No. ER-2014-0258, *Report and Order* issued April 29, 2015.

[24] *In the Matter of The Empire District Electric Company for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area,* Case No. ER-2014-0351, *Report and Order* issued June 24, 2015.

cases, the Commission rejected very similar arguments. In the *Empire* case the Commission specifically found:

> 32. The SPP IM replaced the Energy Imbalance Market ("EIM"). In the SPP IM, Empire's entire native load is supplied from the SPP IM at locational marginal prices. Empire bids in its resources, and if requested by SPP, sells its generation into the SPP IM and receives the revenue.
>
> 33. *This change in procedure has not made Empire's fuel and purchased power costs more or less subject to Empire's control or predictable*.[25] (emphasis added)

In the Ameren Missouri case, the Commission stated:

> The evidence demonstrated that for purposes of operation of the MISO[26] tariff, Ameren Missouri sells all the power it generates into the MISO market and buys back whatever power its needs to serve its native load. From that fact, Ameren Missouri leaps to its conclusion that since it sells all its power to MISO and buys all that power back, all such transactions are off-system sales and purchased power within the meaning of the FAC statute. *The Commission does not accept this point of view*.[27] (emphasis added)

Likewise, the Commission should not accept KCPL's argument.

On page 32 of its initial brief KCPL refers to the "traditional regulatory paradigm" when discussing FAC sharing mechanisms. However, the Commission must recognize that under the "traditional regulatory paradigm" there is *no FAC*; in fact, a Missouri Court found a FAC to be unlawful under the "traditional regulatory paradigm."[28] If KCPL does not want a FAC with a sharing mechanism, no party in the case is forcing KCPL to

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[25] *Id.* at page 24.

[26] The Midcontinent Independent System Operator, which is similar to the SPP.

[27] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service,* Case No. ER-2014-0258, *Report and Order* issued April 29, 2015, page 115.

[28] *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41 (Mo. Banc 1979).

request a FAC—it is KCPL who chose to request one.[29] KCPL's further claim on page 32 of its initial brief that it "will have an incentive to efficiently manage fuel costs" without a sharing mechanism in a FAC (if a FAC is allowed) flies in the face of the Commission's previous decisions on this issue as discussed in Staff's initial brief. In its *Report and Order* issued on May 17, 2007, in Case No. ER-2007-0004—where the Commission first established the current 95%/5% sharing mechanism for KCPL's sister company GMO (formerly known as Aquila)—the Commission stated on page 54 that:

> The Commission also finds after-the-fact prudence reviews alone are insufficient to assure Aquila will continue to take reasonable steps to keep its fuel and purchased power costs down, and the easiest way to ensure a utility retains the incentive to keep fuel and purchased power costs down is to not allow a 100% pass through of those costs.[30]

On page 34 of its initial brief, presumably to support its argument that *all* transmission costs should flow through its FAC (If the Commission authorizes it to have one), rather than only those costs the Commission found appropriate in the recent *Ameren Missouri*[31] and *Empire*[32] rate cases, KCPL refers to not allowing all transmission costs to flow through its FAC as a "disallowance." However, not allowing all of the costs to flow through a FAC is not the same as "disallowing" those costs; they simply are not

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[29] As the Commission is aware, Staff and most parties to this case believe KCPL's fuel adjustment clause request violates the Stipulation and Agreement from Case No. EO-2005-0329 in any event and should be rejected on that basis.

[30] *In the Matter of the Tariffs of Aquila, Inc., d/b/a Aquila Networks – MPS and Aquila Networks – L&P Increasing Electric Rates for the Services Provided to Customers in the Aquila Networks – MPS and Aquila Networks – L&P Service Areas,* Case No. ER-2007-0004, *Report and Order* issued May 17, 2007, p 54.

[31] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service,* Case No. ER-2014-0258, *Report and Order* issued April 29, 2015.

[32] *In the Matter of The Empire District Electric Company for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area,* Case No. ER-2014-0351, *Report and Order* issued June 24, 2015.

allowed to flow through the FAC. KCPL is simply trying to confuse the issue, and the Commission should see through KCPL's ruse.

Section II.A

In its attempt to support its position that its FAC request does not violate the Stipulation and Agreement ("Stipulation") it entered into in Case No. EO-2005-0329, on pages 38 and 39 of its initial brief KCPL gives lip service to what it refers to as the "plain and ordinary" meaning of the phrase "seek to utilize" and to the "four corners" of the Stipulation. However, even a cursory reading of both pages 38 and 39 shows that in its brief KCPL misapplies its own argument, is completely conclusory, and *reads the word "seek" completely out of the phrase "seek to utilize."* Further, although KCPL purports to analyze the "four corners" of the Stipulation, its "analysis" renders the date in the second sentence of the Stipulation paragraph in question meaningless, in violation of the rules of contract construction as stated by the Missouri Supreme Court.[33] Staff addressed this point in detail in its initial brief, and does not repeat itself here.

Also on page 39 of its initial brief, KCPL claims to address the Commission's past understanding of the phrase *"seek to utilize"*, yet fails to acknowledge that in its Report and Order approving the Stipulation the Commission previously recognized that the Stipulation precludes KCPL from proposing a FAC in a rate case filed prior to June 1, 2015.[34] KCPL's additional reference on page 39 to the rate cases

[33] *State ex rel. Riverside Pipeline Company v. Public Service Commission*, 215 S.W.3d 76, at 84 (Mo. Banc 2007).

[34] *In the Matter of a Proposed Regulatory Plan of Kansas City Power & Light Company*, Case No. EO-2005-0329, *Report and Order* issued July 28, 2005, p. 15.

contemplated by the Stipulation is completely irrelevant to the issue at hand, and nothing but a red herring.

On page 41 of its initial brief KCPL begins discussing what it refers to as the parties' past understanding of the phrase. Not surprisingly, KCPL does not mention KCPL employee Mr. Rush's testimony in KCPL's last rate case that "the Company agreed [in the Stipulation] that it will not seek a FAC prior to June 1, 2015"[35] (Emphasis added.) or the similar statements made by KCPL's counsel in that case.[36] Staff addressed this point in detail in its initial brief, and rather than repeating it at length here refers the Commission to its initial brief.

Section II.D(i)

Regarding the issue of what percentage of changes in costs and revenues the Commission should find appropriate to flow through KCPL's fuel adjustment clause, if the Commission authorizes KCPL to use one, on pages 47 and 48 of its initial brief KCPL once again argues for a 100% pass-through. As discussed in greater detail in Staff's initial brief, if the Commission authorizes KCPL to have a FAC it should order a 95/5 percent incentive sharing mechanism for KCPL as it has for all other electric utilities with a FAC.[37] The Commission's findings in Case No.ER-2008-0318 are equally applicable here:

[35] Ex. 207, Schedule ND-S2-11 (surrebuttal testimony of Natelle Dietrich, Sch. ND-S2, p. 11); Ex. 200, pp. 192-193, Staff revenue requirement cost of service report.

[36] Ex. 200, p. 193, Staff revenue requirement cost of service report.

[37] Ex. 208 p. 8.

> AmerenUE's fuel adjustment charge shall include an incentive clause providing that 95 percent of any deviation in fuel and purchased power costs from the base level shall be passed to customers and 5 percent shall be retained by AmerenUE. **This incentive clause will give AmerenUE a sufficient opportunity to earn a fair return on equity as required by Section 386.266 and the Hope and Bluefield decisions.** At the same time, it will protect AmerenUE's customers by giving the company an incentive to be prudent in its decisions by not allowing all costs to simply be passed through to customers.[38] (emphasis added)

Section II.D(iv)

Under the question "Should Southwest Power Pool ("SPP") and other regional transmission organization/independent system operator transmission fees be included in the FAC, and at what level," on page 50 of its initial brief KCPL argues that SPP transmission costs are more volatile and significant for KCPL than the corresponding MISO charges Ameren Missouri incurs, in an apparent attempt to reach a different result concerning transmission costs in its FAC than the result the Commission reached in the *Ameren Missouri*[39] rate case decided this Spring. However, KCPL makes no reference to Empire's transmission costs, when, like KCPL, Empire is a member of SPP. In an even more recent rate case decided this Summer, the Commission reached the same conclusion regarding Empire as it did in the Spring in the *Ameren Missouri* case.[40] As stated in Staff's initial brief, if the Commission authorizes KCPL to have a FAC, then the Commission should include a level of

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[38] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase Its Annual Revenues for Electric Service,* Case No. ER-2008-0318, *Report and Order* issued January 27, 2009, p. 76.

[39] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service,* Case No. ER-2014-0258, *Report and Order* issued April 29, 2015.

[40] *In the Matter of The Empire District Electric Company for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area,* Case No. ER-2014-0351, *Report and Order* issued June 24, 2015.

transmission expense which represents KCPL's (1) costs to transmit electric power KCPL did not generate to its own load and (2) costs to transmit excess electric power KCPL is selling to third parties to locations outside of SPP.[41] Mr. Dauphinais, who testified on behalf of Missouri Industrial Energy Consumers, calculated the associated level to be 7.3%.[42]

Section II.D(xii)

Regarding the issue of how the "J" component should be defined if the Commission authorizes KCPL to have a FAC, KCPL's proposal on page 57 of its initial brief is simply wrong, as it does not appropriately account for line losses between Missouri and Kansas. Staff addressed this in detail in its initial brief, and the "J" component should be defined as discussed therein.

Jeffrey A. Keevil.

Single-Issue Rate Making Mechanisms

Throughout its brief, KCPL tries to persuade the Commission into thinking that the Commission's historical view on single-issue ratemaking and trackers has been laissez-faire, granting any requests in which a utility presupposes a cost increase. Any attempt at imparting standards to evaluate the appropriateness of such proposal KCPL disparages as "constructing multi-factor tests out of whole cloth."[43] Such standards are not an exercise in knitting by parties, but application of the

[41] Ex. 209, pp. 4-5 and 9-10.

[42] Ex. 557 (Dauphinais rebuttal) pp. 10-14.

[43] KCPL initial brief, p. 29, ¶ 84.

Commission's own articulated standards. In discussing KCPL's request for a transmission tracker in 2012, the Commission held:

> The projected transmission cost increases are not "extraordinary" within the legal definition because they are not **rare** or current. "**Rare" does not describe cost increases in the utility business generally**…Transmission is an **ordinary and typical, not an abnormal and significantly different part of Applicants' activities**. Also, Applicants showed that **paying more for transmission than in the previous year is a foreseeably recurring event, not an unusual and infrequent event**. [emphasis added][44]

In numerous cases, the Commission articulated the same reasons as Staff puts forth currently against single-issue ratemaking and tracking mechanisms, in particular, acknowledging that trackers dull a utility's incentive to control costs.

> The Commission is unwilling to implement another tracker. As the Commission has previously indicated, trackers should be used sparingly because they tend to limit a utility's incentive to prudently manage costs. If all such costs can simply be passed on to ratepayers, there is a natural incentive for the company to simply incur the cost.[45]
>
> "They should be used sparingly because they can reduce the incentive of the utility to closely control its costs."[46]
>
> "**Good public policy still requires the extra incentive a utility faces without the protection of a tracker**."[emphasis added][47]

KCPL tries to refute these assertions by claiming a tracker is not a single-issue rate setting mechanism and is only considered for recovery in a rate case.[48] The reality is quite different. In a review of a sample of 45 Commission decisions, spanning the

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[44] *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service*, File No. ER-2012-0174, *Report and Order* p. 31.

[45] *In the Matter of Union Electric Company, d/b/a Ameren UEs Tariff to Increase Revenues for Electric Service*, File No. ER-2010-0036, *Report and Order.*

[46] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Revenues for Electric Service*, File No. ER-2014-0258, *Report and Order.*

[47] *Id.*

[48] KCPL initial brief, p. 63, ¶ 188.

last 10 years, no tracked cost amounts have been disallowed. In a traditional rate-making model, the burden is upon KCPL to argue for deviations and increases to the level of expenses calculated by the ratemaking formula including performed annualizations and normalizations. Once a tracker is approved, the utility's costs are presumed to be prudently incurred, under the Missouri prudence standard, unless challenged for imprudence and inefficiency.[49] This can be a large hurdle to overcome, since the utilities hold all the information, and Staff conducts its audits based on what the utility decides to release. In light of this standard, many of Commissioner Hall's concerns about rate case expense elucidated in the recent Empire rate case are equally appropriate concerns about trackers, that review is "cumbersome," "resource-intensive" and "even impractical," "simply put, it does not work as well as providing a direct financial incentive to the utility to minimize litigation costs."[50] The Commission voiced this concern in the recent Ameren rate case as well. ("Under a tracker, such costs would be subject to a prudence review, but a prudence review cannot control costs as efficiently as a strong economic incentive.")[51]

Case Law

KCPL cites to a sole case to support its position, *State ex. rel. Midwest Gas Users' Ass'n v. PSC*, 976 S.W.2d 470 (W.D. Mo. App. 1998) ("*Midwest Gas Users*"). The reliance is misplaced, as *Midwest Gas Users* involves the gas industry and the

[49] *State ex. rel. Associated Natural Gas Co. v. PSC*, 954 S.W.2d 520, 528 (Mo. App. W.D. 1997).

[50] *In the Matter of the Empire District Electric Company for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Areas*, File No. ER-2014-0351, *Concurring Opinion of Commissioner Daniel Y. Hall* p. 4.

[51] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Revenues for Electric Service*, File No. ER-2014-0258, *Report and Order.*

purchased gas adjustment/actual cost adjustment ("PGA/ACA") mechanism. The PGA/ACA works most analogously to a fuel adjustment clause as a rate adjustment mechanism. Furthermore; *Midwest Gas Users* refutes KCPL's assertion that looking at any other cost decreases to offset the cost being tracked is an inappropriate question. ("It might cause the PSC to allow the company to raise rates to cover increased costs in one area without realizing that there were counterbalancing savings in another area.)[52]

KCPL then goes on to attempt to distinguish *State ex rel. Office of Public Counsel v. PSC*, 858 S.W.2d 806 (W.D. Mo. App. 1992) ("*OPC*"). Ironically, KCPL tries to distinguish it as a case about an AAO, not one paragraph after asserting trackers perform the same function as a PGA/ACA rate adjusting mechanism.[53] KCPL attempts to distort the holding in *OPC* as standing for broad discretion in defining extraordinary items by saying it captures government mandates like the Clean Air Act.[54] In fact, the court in *OPC* found that the projects, costing approximately $40 million dollars and extending the plant asset's life by 20 years and converting the station to burn low sulphur coal were of significant effect.[55] It is a misrepresentation to claim that the Commission was granted broad terms to define extraordinary items.[56] *OPC* instead supports the current rationale the Commission uses in granting exceptions to single-issue ratemaking. None of KCPL's proposals meet the standard under *OPC*, as the expenses proposed to be tracked are usual, recurring, typical business activities.

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[52] *State ex. rel. Midwest Gas Users' Ass'n v. PSC*, 976 S.W.2d 470 (W.D. Mo. App. 1998).

[53] KCPL initial brief, p. 25, ¶ 74.

[54] *Id.*

[55] *State ex rel. Office of Public Counsel v. PSC*, 858 S.W.2d 806 (W.D. Mo. App. 1992).

[56] KCPL initial brief, p. 25, ¶ 74.

In contrast, *OPC*'s entire holding was premised on the fact that the Commission determined the construction projects were "*unusual and nonrecurring*" "events and transactions of *significant* effect which would *not be expected to recur frequently* and which would not be consider as recurring factors in any evaluation of the *ordinary operating processes of business*."[57] In other words, *OPC* held it was appropriate for the Commission to determine the costs could be deferred on the basis that the occurrence of the costs was infrequent and rare.

Current Regulatory Environment

KCPL asserts that we are in extraordinary times, and thus new approaches are required to achieve fairness.[58] KCPL seems certain, at least when facing the Commission, that it will experience sizeable earning deficits. However, when facing shareholders, it paints a different picture, where increases in overall growth and positive cash flow are touted.[59] As the saying goes, KCPL seems to be talking out of both sides of its mouth.

In its brief, KCPL discusses what it refers to as "bilateral fairness" which it views as fair to the utility and fair to the customer taking utility service.[60] But KCPL's tracker requests attempt to alter this notion of "bilateral fairness" by shifting all risks of the utility's operations covered by the trackers to utility customers—not a balanced approach KCPL's brief is attempting to portray.

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[57] *State ex rel. Office of Public Counsel v. PSC*, 858 S.W.2d 806 (W.D. Mo. App. 1992).

[58] KCPL initial brief, p. 26, ¶¶ 76-77.

[59] Ex. 215, Staff witness Hyneman rebuttal, p. 20.

[60] KCPL initial brief, p. 26, ¶ 76.

Also, in this discussion of "bilateral fairness" KCPL addresses the Commission's use of historical test year to determine rates.[61] Staff adequately replied to how historical test years are used in setting rates in Missouri at pages 69 through 72 of its initial brief. Therefore, it is not necessary to repeat the response to KCP's criticism of using test year to set rates in this state other than to say the annualization and normalization process using the most recent information available is how rates are determined, not test year results as KCPL would have the Commission believe.[62]

A larger view of Missouri's current environment also casts doubt on KCPL's claims of extraordinary times. Ameren Missouri's declassified earnings results show a it has consistently earned above its authorized ROE since 2012.[63] KCPL witness Mr. Ives also notes that GMO earned at or above its authorized ROE in 2013. The Commission can look to current FAC surveillance reports filed by Ameren Missouri, GMO and Empire for evidence of the healthy ROEs experienced by Missouri utilities. These utilities operate without use of the myriad tracking proposals KCPL advances.[64]

Glancing at Missouri's other utilities and the Commission's recent rate case history refutes KCPL's assertion that adopting requested mechanisms reduces the number of rate cases filed. Use of trackers and fuel adjustment clauses in justified circumstances has increased in the past ten years, but utilities' rate case filings have concurrently accelerated. Empire and Ameren, both companies with fuel adjustment

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[61] KCPL initial brief, p. 26, ¶ 76.

[62] Staff initial brief, pp. 69-72.

[63] Ex., p. 14.

[64] Tr. 1384 to 1385.

clauses and who have had some of the trackers KCPL proposed in this case, have recently ended rate proceedings, and both have indicated they will be filing cases again in the coming year, if not sooner. KCPL itself, working under the assumption of receiving a property tax tracker, states in its initial brief "it would defer $6-7 million if rates in KCP&L's next rate case take effect on January 1, 2018."[65] This rate effective date requires a filing date of February 2017, which means a rate case filing approximately every 2 years, as often as KCPL files currently. (See Case Nos. ER-2012-0174 and ER-2010-0355).

This logic does not follow. If, for example, a utility is able to offset increases in property taxes with decreases in its required interest payments on debt, it does not matter in the least whether the reduction in debt payments had any direct relationship to the increase in property taxes. The math is the same under a "direct cost" or the above described scenario; the cost increase is offset by the cost decrease, and earnings do not suffer as a result. KCPL also misunderstands how Missouri rates are set if it believes rates are set to capture a set amount of any given expense or cost item in the future.[66] As Staff witness Oligschlaeger explains, rates are set based upon a relationship established between the revenues, expenses, rate base and rate of return levels for a utility at a set point in time.[67] The basic tenant of this methodology is that any changes, such as an increase, to a utility in the revenue requirement in any of those

[65] KCPL initial brief, p. 69, ¶ 204.

[66] Ex- 236, p. 4.

[67] *Id.*

areas may be offset in whole or part by concurrent changes, such as a decrease, in other areas.[68]

Nicole Mers.

III. Transmission Fees Expense / Transmission Tracker

Because transmission fees expense is also a true-up item, it is addressed in that section of this brief as well.

Single-Issue Rate Making Mechanisms

A continuing theme throughout KCPL's presentation of its case, including its initial brief[69], is that it is unable to earn its authorized rate of return under "traditional ratemaking" due to increasing costs and that it therefore needs special ratemaking mechanisms such as a transmission tracker (which are not authorized for other electric utilities in the state). The Commission should be aware that this is simply a new verse of an old refrain that KCPL has sung many times before. For example, and there are many more, in KCPL's 1982 rate case, in *rejecting* KCPL's request for an "attrition allowance" the Commission said in its Report and Order:

> The company indicates in its brief that this case represents its *fourth attempt* to have the commission adopt a procedure to recognize the effects of continuing inflation. The company's persistence is based on what it perceives as a commission trend toward such a position and the company's claimed deficiencies in earning its authorized rate of return due to attrition. Attrition is the word that has been adopted to describe the effect of setting rates on historical or past cost in a period of rising cost.

[68] *Id.*

[69] For example, KCPL claims "these are extraordinary times and demand new approaches" on page 26 of its initial brief.

The effect, according to the company, is that due to rising costs it can never achieve its authorized rate of return. [70] (emphasis added)

Again in this case, it is the same tired, old argument tied to a different proposal; everything old is new again. Curiously, even though KCPL offered select pages from the Commission's Report and Order from the 1982 case into evidence as Exhibit 150 in this case, it did not include the page where the foregoing quote appears. It is also interesting to note that among the parties in that case who opposed KCPL's proposed "attrition allowance" was Public Counsel James M. Fischer[71], one of the outside attorneys representing KCPL in this case.

Under its discussion of Tracker Mechanisms on page 29 of its initial brief KCPL claims, "The question is not if there are conceivably any other cost decreases within the entire universe of utility operations which could provide an 'offset' to the cost being tracked. The question is whether there are cost factors which could change the actual cost component being tracked." However, KCPL's claim is refuted by the Missouri Court of Appeal's opinion in *State ex rel. Midwest Gas Users' Association v. Public Service Commission*, 976 S.W.2d 470 (Mo. App. 1998), in which the court stated, in addressing the prior cases of *Hotel Continental v. Burton*, 334 S.W.2d 75 (Mo. 1960) and *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41 (Mo. Banc 1979), that "the reasons why the PSC is not to consider some costs in isolation" are "because it might cause the PSC to allow the

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[70] *In the Matter of Kansas City Power & Light Company of Kansas City, Missouri, for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, 25 Mo. P.S.C. (N.S.) 229, 238 (1982).

[71] *See Id. at* 230 and 239.

company to raise rates to cover increased costs in one area without realizing that there were counterbalancing savings *in another area.*"[72] (Emphasis added). The court in *Midwest Gas Users' Association* went on to say that one of the reasons the *Utility Consumers Council of Missouri* court struck down the FAC was "because the costs at issue in the FAC . . . were subject to the control of the utilities, . . . and because the Court believed that the amount of money spent for fuel . . . *could be offset by savings in other areas*."[73] (Emphasis added). KCPL is simply wrong.

Section III.B

Under its discussion of Transmission Fees Expense on page 61 of its initial brief KCPL claims the Commission should grant it a tracker for SPP transmission fee expenses because they meet KCPL's claimed criteria. However, KCPL fails to mention that the Commission rejected KCPL's request for a transmission tracker in its last rate case. In that case, the Commission stated:

> "Extraordinary" describes matters subject to deferral, and does not apply to transmission cost increases, as discussed below.
>
> * * *
> Applicants [KCPL and GMO] have not proved that the transmission cost increases meet [the] standard. The projected transmission cost increases are not "extraordinary" within the legal definition because they are not rare or current.
>
> "Rare" does not describe cost increases in the utility business generally. Specifically, Applicants' evidence shows the following as to transmission. Transmission is an ordinary and typical, not an abnormal and significantly different, part of Applicants' activities. Also, Applicants showed that paying more for transmission than in the previous year is a

[72] *State ex rel. Midwest Gas Users' Association v. Public Service Commission*, 976 S.W.2d 470, 480 (Mo. App. 1998).

[73] *Id.*

> foreseeably recurring event, not an unusual and infrequent event. Thus, "items related to the effects of" transmission cost increases are not rare and, therefore, are not extraordinary.[74]

The Commission should again deny KCPL's transmission tracker request for all of the reasons set forth in more detail in Staff's initial brief.

Jeffrey A. Keevil.

IV. Property Tax Expense

A. What level of property tax expense should the Commission recognize in KCPL's revenue requirement?

B. Should a tracker be implemented for KCPL's property tax expense that varies from the level of property tax expense the Commission recognizes in KCPL's revenue requirement?

i. Should KCPL get a return on as well as return of the tracked amounts?

ii. Should KCPL get carrying costs on the tracked amounts?

Introduction:

Staff has never recommended the use of a tracker for property tax expense and continues to recommend in this case the denial of a property tax tracker. Staff's recommendation that rates be set based on a ratio of plant in service and property taxes paid in 2014 is consistent with what Staff and other parties have recommended for recovery of property tax expenses in previous rate cases. This is also the same method adopted by KCPL to annualize property taxes.[75] KCPL asserts that its property tax assessment will continue to rise after rates are set in this case, but the fact of the matter

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[74] *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service,* Case No. ER-2012-0174, *Report and Order* issued January 9, 2013, pp. 30-31.

[75] Tr. 18:1817.

is that no one knows what level of property taxes will be paid in the future. That is beyond the scope of this rate case.

A. What amount of property tax should be recognized in KCPL's revenue requirement?

Staff's recommended treatment of property tax expense in this case is to annualize property tax expenses based upon property in-service on January 1, 2015,[76] multiplying this amount by a ratio derived from historical tax payments.[77] Staff applied a property tax ratio based on actual 2014 property tax payments divided by January 1, 2014, taxable plant.[78] Both Staff and KCPL calculate property tax expense by applying the tax rate paid for the previous year to the property owned at the start of the current year.[79] KCPL's expert witness, Melissa Hardesty, admitted that she calculated the annualized level of property tax using the same method as Staff.[80]

Tax bills for each year are assessed on the property KCPL owns on January 1 of that calendar year.[81] The taxes are typically not due to the taxing authorities until December 31 of the same year.[82] All plant placed in service after January 1, 2015 will not be assessed until January 1, 2016 and not due until December 31, 2016.[83] Property taxes payable at that time are well beyond the scope of this case.

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[76] Ex. 200, *Staff revenue requirement cost of service report*, p. 128.

[77] *Id.*; Tr. 18:1818-19.

[78] Ex. 200, *Staff revenue requirement cost of service report*, p. 128; Ex. 222, Lyons rebuttal, p. 7.

[79] Ex. 200, *Staff revenue requirement cost of service report*, p. 129; Tr. 18:1818.

[80] Tr. 18:1817.

[81] Ex. 200, *Staff revenue requirement cost of service report*, p. 128.

[82] *Id.*

[83] Ex. 222, Staff witness Lyons rebuttal, p. 7.

Staff recommends using the annualized property tax method of calculation as providing the best available information, since it relies on the actual January 1, 2015, balance of KCPL's property and uses the most recent, known tax rate (2014), without attempting to estimate or project any change in the rate of taxation that is not known as of the update period or the true up date in this case.[84] Inclusion in rates of a forward-looking arbitrary estimate of property taxes, as alternatively proposed by KCPL for the first time in surrebuttal,[85] would not be based on values that are known and measurable at the conclusion of the rate case proceeding.[86]

Staff contends that KCPL's forecasted property tax expense is significantly overstated and, therefore, should not be used to annualize KCPL's property taxes.[87]

Staff's approach to inclusion of property taxes in rates is consistent with that taken previously,[88] and it has received several favorable rulings from the Commission in prior rate cases. The method used by Staff and other parties in this case and previous rate cases is the same method adopted by KCPL to annualize property taxes.[89]

B. Should the Commission grant KCPL a Property Tax Tracker?

No, the Commission should not grant KCPL a property tax tracker. KCPL makes the argument that a tracker is necessary in this case because KCPL's property tax

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[84] Ex. 200, *Staff revenue requirement cost of service report,* p. 129.

[85] Ex. 136, KCPL witness Rush surrebuttal, p. 16-17.

[86] Staff notes that this was improper surrebuttal because it should have been included in KCPL's direct case. See Commission Rule 4 CSR 240-2.130(7)(D),"Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony."

[87] Ex. 223, Staff witness Lyons surrebuttal, pp. 26-27 (HC); Tr. 18:1820.

[88] Tr. 18:1819.

[89] Tr. 18:1817.

assessment will continue to rise after rates are set in this case.[90] It goes on to state, "KCP&L will only see a partial increase in 2016 property taxes related to the investment in La Cygne environmental equipment and Wolf Creek investments. It will likely be 2017 ***or later*** before the full impact of the net operating income generated by the new rates authorized due to these investments will be represented in property tax assessments" (emphasis added).[91] However, Staff would like to remind the Commission that a possible increase in KCPL's future property taxes is not rare or unusual and does not justify the use of a tracker.[92] Further, no one can know what property taxes will be for KCPL in 2016 or 2017, and contemplating setting rates based on such speculative future values is well beyond the scope of this case.

Staff's position is that the use of trackers should be restricted to highly unusual or unique circumstances, such as consistent volatility in the amount of the cost to be tracked, incurrence of a new cost for which there is very little or no prior history on which rates can be based, or costs incurred pursuant to a commission rule.[93] Property taxes meet none of these standards. In fact, property taxes are a cost that is dealt with in every rate case filed by Missouri utilities of every type.[94]

KCPL seems to believe that Staff is against a property tax tracker in part because it anticipates a decreasing level of property taxes.[95] It cites Karen Lyons'

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[90] KCPL initial brief, p. 64.

[91] *Id*. At p. 66.

[92] Ex. 223, Staff witness Lyons surrebuttal, p. 24.

[93] Ex. 234, Oligschlaeger rebuttal, p. 3-4.

[94] *Id.* At p. 10; Tr. 1490.

[95] KCPL initial brief, p. 68.

rebuttal testimony in which she responded to Mr. Klote's testimony and indicated that KCPL is no longer in a heavy construction phase.[96] Ms. Lyons never stated that Staff believes property taxes will be decreasing. Construction is but one factor that can affect property taxes. Changes in assessments and levies are another.

KCPL indicates in its initial brief that increases in the stock price of the Company affect the property taxes paid by KCPL, without mentioning anything about potential decreases in the stock price and how that might affect the property taxes.[97] It is interesting to note that KCPL's proposal for a property tax tracker assumes increases in its stock prices, increases in revenue, or the use of a forecasted level of property taxes. None of these are known and measurable. No one knows what KCPL's stock price will be in the future or what KCPL's revenues will be in the future. There are variables that will impact the KCPL's future stock price and revenues that cannot be determined in this rate case. Staff uses known and measurable data to estimate future property taxes. Again, KCPL has adopted Staff's method.

Staff consistently uses the test year method of ratemaking, and this should not be changed for a single issue. This specific expense can be reasonably calculated, and a tracker for this expense would fail to take into consideration all increases or decreases of KCPL's other expenses and revenues.[98]

Ratemaking principles such as normalizations and annualizations are not intended to continue indefinitely. Staff's revenue requirement captures the relationship

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[96] Ex. 222, Staff witness Lyons rebuttal, p. 11.

[97] KCPL initial brief, p. 68.

[98] Ex. 222, Staff witness Lyons rebuttal, p. 8.

of KCPL investment, revenue, and expense at a point in time. If that relationship is skewed sometime in the future, for instance in 2017, KCPL has the option to file a rate case if needed.[99]

C. If the Commission grants KCPL a Property Tax Tracker, should KCPL get a return on as well as return of the tracked amounts?

If the Commission grants KCPL's request for a property tax tracker, the Commission should not allow rate base treatment for any unamortized balance related to property taxes.[100] Property taxes are a normal operating expense and not capital in nature.[101] KCPL's request for carrying costs and rate base treatment would result in KCPL customers paying more for an expense that can readily be determined using normal ratemaking principles.[102] Consequently, KCPL should not be allowed to earn a return on these expenses.

D. If the Commission grants KCPL a Property Tax Tracker, should KCPL get carrying costs on the tracked amounts?

If the Commission grants KCPL's request for a property tax tracker, it should not grant carrying costs on the tracked amounts. Carrying costs are comparable to a return on an investment that may be added to a deferred cost to recognize the delay in recovering the cost in rates.[103] In other words, the accrual of carrying costs is intended to make KCPL whole for the time value of money associated with rate recovery of

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[99] Ex. 222, Staff witness Lyons rebuttal, p. 6.

[100] Ex. 222, Staff witness Lyons rebuttal, p. 14.

[101] *Id.*

[102] *Id.*

[103] *Id.* at p. 13.

deferred property tax expense.[104] If the Commission granted KCPL's proposed property tax tracker that includes carrying costs, KCPL customers would ultimately pay more in a future rate case for an expense item that is known and measureable according to normal ratemaking principles.[105] The increased expenses are ultimately paid by KCPL's customers.[106] Under KCPL's proposal, all risks relating to property taxes would fall on the KCPL's customers.[107] In Staff's view, this treatment would be inequitable and thus unjust and unreasonable.

Conclusion:

Staff urges the Commission to adopt its customary method for determining property tax expense and to reject KCPL's attempt to inflate this amount by using overstated estimates. Staff also urges the Commission to reject KCPL's request for a property tax tracker. KCPL's tracker proposal in this case would allow it to collect from customers in the future any increases it may incur in the area of property taxes while keeping for itself any offsetting declines in its cost of service.[108] This would not result in equitable or balanced ratemaking.[109] Finally, if the Commission does establish a property tax tracker, KCPL should not get either carrying costs or a return "on" the amount deferred.

Marcella Mueth.

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[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Id.*

[108] Ex. 236, Staff witness Oligschlaeger surrebuttal, p. 3.

[109] *Id.*

V. CIP/Cyber-Security Expense

A. What level of CIP/cyber-security expense should the Commission recognize in KCPL's revenue requirement?

B. Should a tracker be implemented for KCPL's CIP/cyber-security expense that varies from the level of CIP/cyber-security expense the Commission recognizes in KCPL's revenue requirement?

i. Should KCPL get a return on as well as return of the tracked amounts?

ii. Should KCPL get carrying costs on the tracked amounts?

C. If the Commission grants KCPL a CIP/cybersecurity tracker, should KCPL get a return on as well as return of the tracked amounts and get carrying costs on the tracked amounts?

In its initial brief KCPL continues to ignore the problems with tracker mechanisms, in which KCPL requests to recover a specific expense that can be reasonably calculated, without taking into consideration all increases or decreases in KCPL's other expenses and revenues.[110] KCPL asserts that it will recognize a revenue shortfall because of the mismatch between the annualized level of CIP/cyber-security expenses and the actual expenses incurred during the period rates are in effect.[111] Staff agrees there will be a mismatch, but not the one KCPL asserts. KCPL ignores the mismatch created by deferring an expense to a future time, but ignoring changes in other aspects of its cost of service up to that time, which violates the matching principle. Ratemaking principles are used to match the utility's investment and expense to its revenue during the period rates are in effect.[112] A CIP/cyber-security tracker will cause

[110] Ex. 222, Staff witness Lyons rebuttal, p. 28.

[111] KCPL Initial brief, p. 74, ¶ 217.

[112] Ex. 222, Staff witness Lyons rebuttal, p. 8.

this relationship between investment, expenses and revenue to fluctuate rather than match.

KCPL states, on page 77 of its initial brief,

> For example, providing tracker treatment of non-labor O&M while excluding labor O&M from tracker treatment would send the message, whether intentionally or not, that KCP&L should undertake it CIP/cyber-security work with more contractors (non-labor O&M) as opposed to internal employees (labor O&M). This could lead to **higher costs** or a lower level of institutional knowledge be retained by KCP&L employees than might otherwise be the case, neither of which will be a favorable outcome.

This is a perfect example of why the Commission should not grant a tracker for either labor or non-labor CIP/Cyber-security expenses. Trackers and other single-issue ratemaking mechanisms can work as a strong disincentive for utility management to control costs.[113] KCPL has an obligation to its shareholders and its customers to manage its costs. By stating that excluding internal labor O&M from tracker treatment might cause KCPL to hire contactors when it could hire employees at a lower cost (at the expense of its ratepayers), KCPL demonstrates perfectly the disincentives inherent in trackers.[114]

Staff shares other parties' concern that any regulatory tracking mechanism must clearly specify includable costs using defined criteria that are administratively simple to apply and verify.[115] For example, there should be clear lines to segregate the **new**

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[113] Ex. 215, Staff witness Hyneman rebuttal, p. 2.

[114] In addition, the reference to a lower level of institutional knowledge is not necessarily true. KCPL will need to write and modify procedure descriptions to support the development of custom software for its CIP/Cybersecurity processes. Documenting that "institutional knowledge" will increase task efficiency, decrease task error rates and an lower the overall cost of labor. Gross Rebuttal, Page 7.

[115] Ex. 502, MECG witness Brosch direct, p. 36.

labor hours for dedicated CIP/Cybersecurity compliance personnel's incremental work from the baseline level of historical activities and costs. Without bright lines, as new dedicated employees are hired for compliance efforts, there is nothing to prevent KCPL from reducing staffing in other areas and no accounting for those staff reductions.[116] If this Commission authorizes a tracker with different terms than the one in the Stipulation and Agreement in Kansas that excludes labor, Staff's concern with KCPL's ability to accurately track labor costs between the two jurisdictions will intensify.

Staff continues to oppose a CIP/Cyber-security tracker for the reasons given in its initial brief. However, if the Commission does grant the tracker, Staff recommends the Commission authorize KCPL to use a CIP/Cyber-security tracker with the same provisions KCPL agreed to in Kansas.[117] If the Commission determines that labor should be included, Staff recommends that KCPL be required to offset increased labor costs related to CIP/cyber-security with any employee reductions and other cost savings that may occur in its other operations.[118]

Colleen M. Dale and Whitney Payne.

VIII. Rate Case Expense

A. Were any rate case expenses claimed by KCPL imprudently incurred?

B. Should the Commission require KCPL shareholders to cover a portion of KCPL's rate case expense?

C. What level of rate case expense for this rate case should the Commission recognize in KCPL's revenue requirement?

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[116] *Id*. at p. 35

[117] Staff initial brief, p. 101.

[118] Lyons rebuttal, p. 27.

Introduction:

Rate case expense encompasses the costs incurred by a utility in prosecuting a general rate case and can be a significant expense. It is often a contentious issue in rate cases. In the present case, because of the unique nature of rate case expense, Staff urges the Commission to consider a 50/50 sharing of rate case expense between ratepayers and shareholders because rate case expense is not incurred solely to benefit the utility's customers. Instead, it is incurred partly – perhaps largely -- to benefit shareholders.

Staff is not requesting that the Commission establish a new rule or policy that would be applicable to all public utilities in the state, as KCPL suggests. Staff has stated that it intends to review this issue in future rate proceedings on a case-by-case basis.[119]

A. Was any of the rate case expense incurred by KCPL imprudent?

Staff is seeking disallowance of all of the expenses of Dr. Overcast, because his testimony is partly inapplicable to Missouri, excessive, and partly duplicative of the testimony of other KCPL witnesses.[120] Those other witnesses are employees of KCPL whose testimony did not result in any incremental rate case expense. At the time KCPL engaged Dr. Overcast, its management knew or should have known that it had ample employee witnesses available to address the issues concerned.

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[119] Tr. 13:1054.

[120] Ex. 226, Majors surrebuttal, p. 62; Tr. 13:920-21; 1031; 1050. The amount in question is approximately $36,000. Tr. 13:1032.

Although KCPL attempted to show that Dr. Overcast brought a national perspective, nothing in this perspective added anything useful to the testimony before the Commission. In fact, Dr. Overcast admitted to a startling lack of familiarity with Missouri's legal and Commission-driven framework regarding single-issue ratemaking. He admitted to not examining the underlying statutes, rules, or case law for his purported thorough review of ratemaking practices in his expert testimony.[121]

Staff has shown that the engagement of Dr. Overcast was excessive and duplicative, and KCPL has not provided anything to prove otherwise.

B. Should KCPL's shareholders share any part of KCPL's rate case expense?

Staff recommends a 50/50 sharing of the actual reasonable and prudent rate case expenses incurred in relation to this case between shareholders and ratepayers.[122] The Commission has once approved a sharing mechanism for rate case expense,[123] and it has acknowledged in a number of other cases that it has the authority to do so again if ever it deems such a mechanism appropriate.[124] Under Missouri Law, the Commission must set just and reasonable rates,[125] and rates that include 100% of the utility's rate case expense may not be just or reasonable.

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[121] Tr. 16:1341.

[122] Ex. 200, *Staff revenue requirement cost of service report*, p. 131; Ex. 226, Majors surrebuttal, p. 55; Ex. 236, Oligschlaeger surrebuttal, p. 9.

[123] *In re Arkansas Power and Light Co.*, 28 Mo.P.S.C. (N.S.) 435 (1986).

[124] See, *In the Matter of Kansas City Power & Light Company*, Report and Order, Case Nos. EO-85-185 and EO-85-224, 28 Mo. P.S.C. (N.S.)229, 263 (1986), and *In the Matter of Missouri Gas Energy*, Report and Order, File No. GR-2009-0355, 19 Mo. P.S.C. 3d 245. 303, (2010).

[125] "…All charges made or demanded by any…electrical corporation…shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge…is prohibited." Section 393.130.1, RSMo 2000 as currently supplemented.

KCPL argues that "rate case expenses are no different than other ordinary and essential operating expenses of the Company which benefit both shareholders and customers."[126] It specifically cites an example of a new power plant as providing benefits to both customers and shareholders.[127] However, assuming a new power plant is necessary to provide safe and adequate service and that its construction cost was prudently incurred, there is no inherent conflict between the interests of the customers and shareholders regarding the existence of that new plant. The same is not true of rate case expense, where there is an inherent and significant conflict of interest. Examples from this rate case would include asking customers to fund in entirety efforts to reward the utility with an above-market ROE, or asking them to fund efforts for authorization of ratemaking proposals intended to increase the scope of allowed single-issue ratemaking applicable to KCPL, both of which would ultimately result in higher customer rates and higher utility profits if successful.

Generally, utility management has a high degree of control over rate case expense. KCPL employs several in-house attorneys with significant prior experience in Missouri rate proceedings. Rate case expenses generally do not include internal labor costs, as those are included in the cost of service through payroll annualization and are not incremental expenses. The largest amounts of rate case expense usually consist of costs associated with use of outside witnesses/consultants and outside attorneys hired by the utility to participate in the rate case process.[128] The utility can decide how much

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[126] KCPL initial brief, p. 94.

[127] Ex. 120, Ives rebuttal, pp. 20-21.

[128] Ex. 200, *Staff revenue requirement cost of service report*, p. 131-132.

of its internal resources to employ during a rate case, and it can decide how many outside consultants and attorneys to hire.

In this case, KCPL argues that it needed to hire outside attorneys and consultants to respond to arguments raised by Staff and other parties to this proceeding. While this is no doubt true in part, it is also true that KCPL hired these people as part of its strategy to obtain a higher ROE than recently allowed by the Commission, as well as to promote KCPL's recommendations to adopt single-issue tracker mechanisms to an unprecedented degree in this state. KCPL had a much greater degree of control over the scope of these issues in this rate case than Staff or other parties.

It is undisputed that there is a legal presumption of prudence related to rate case expenses.[129] While KCPL insists it carefully scrutinizes and manages its costs, and that the prudency review is designed to ensure that unnecessary and exorbitant rate case expenses are disallowed, KCPL recognizes in its initial brief that "the Commission will not lightly intrude into the Company's decision about how best to present its case."[130] It is indisputable that the Commission has only rarely disallowed even a portion of a utility's rate case expense as imprudently incurred.[131] Staff believes it would be better to implement structural incentives for efficiency up front than to rely solely on after-the-fact prudence reviews.[132]

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[129] KCPL initial brief, p. 95.

[130] Id. At 106; Report and Order at 75, *In re Missouri Gas Energy*, Case No. GR-2004-0209 (Sept. 21, 2004).

[131] Tr. 13:1016-1017.

[132] Ex. 243, Review of Rate Case Expense Matters, p. 11.

KCPL argues that it is inappropriate for the Commission to disallow full recovery of prudently incurred rate case expenses. The Commission should note that prudence is only one question that needs to be answered before allowing a cost to be recovered in rates. A prudently incurred expense that does not benefit customers should not be recoverable in rates. For example, certain types of incentive compensation expenses are routinely denied rate recovery in this state. Staff does not allege that these costs are incurred imprudently by utilities, but they do not result in a benefit to customers. Rate case expense should be viewed similarly, except that including 50% of the amount in rates would be reasonable.[133]

During the course of an investigation ordered by the Commission on April 27, 2011, Staff determined that the current practice of allowing a utility to recover all, or almost all, of its rate case expense from its customers creates a disincentive for utility management to control rate case expense.[134] KCPL attempts to argue that it has an incentive to "be efficient in the presentation of its rate cases,"[135] but all it really shows is an incentive to wait to file its next rate case in order to recover its rate case expenses for the previous case. Any incentive KCPL might have is vastly overcome by the disincentive to control costs if it expects authorization from the Commission to recover all, or almost all, of its rate case expenses from its ratepayers.[136]

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[133] Ex. 200, *Staff Revenue requirement cost of service report*, p. 133-134.

[134] Ex. 243, Review of Rate Case Expense Matters; Ex. 200, *Staff revenue requirement cost of service report*, pp. 133-134; Ex. 226, Majors surrebuttal, p. 57.

[135] KCPL initial brief, p. 98.

[136] Ex. 200, *Staff revenue requirement cost of service report*, p. 133.

In its initial brief, KCPL attempts to contrast the number of attorneys it used in this case to the greater number used by Staff and other parties in total.[137] A distinction KCPL fails to make is that all of the assigned Staff attorneys represent embedded costs, and their assignment to the KCPL rate case did not increase the ultimate cost to the taxpayer of funding the agency's operations. In contrast, KCPL's outside attorneys do represent significant incremental costs potentially recoverable in rates.

KCPL argues that a disallowance of 50% of its rate case expense would restrict its ability to put on its rate case.[138] However, Darrin Ives testified that such a disallowance would not have an unfair effect on KCPL's ability to prosecute a rate case, and it would not cause KCPL to deviate from its practice of devoting the level of resources it believes is necessary to present the facts to the Commission.[139]

The rate case process is adversarial, as KCPL well knows, and KCPL's interests do not always align with those of its customers. KCPL leans heavily on the fact that all parties, including KCPL, should have the opportunity to present their facts and arguments to the Commission.[140] What it doesn't consider is that under KCPL's proposal, ratepayers would be required to pay all expenses KCPL incurs in seeking rates potentially greater than what will be ultimately determined to be just and reasonable. While it is appropriate for customers to bear some portion of the utility's cost of prosecuting a rate case, it is also appropriate for shareholders to bear a portion,

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[137] KCPL initial brief, pp. 98-99.

[138] KCPL initial brief, p. 104.

[139] Tr. 13: 1014-1016.

[140] KCPL initial brief, p. 105, citing Report and Order, p. 41, *In re Ameren Missouri*, Case No. ER-2012-0166 (Dec. 12, 2012).

as a significant amount of time and effort is spent advocating for their return on investment.[141] Any amount of rate increase sought over a reasonable rate of return is solely sought for the benefit of the shareholders.

KCPL concedes that the Commission may render its decision in a contested case based upon the specific facts of the case.[142] This case, for the various reasons provided in testimony, in the hearing room, and in Staff's initial brief, justifies a 50% sharing of rate case expense between shareholders and ratepayers.

C. What level of rate case expense for this proceeding should the Commission recognize in KCPL's revenue requirement?

Staff recommends a 50/50 sharing of reasonable and prudent rate case expense between shareholders and ratepayers.[143] This amount should be normalized over three years, so only 1/3 of the amount determined to be recoverable from the ratepayers should be included in the revenue requirement.[144]

Conclusion:

The Commission is required to set just and reasonable rates in consideration of all relevant factors. One such relevant factor is that expenses incurred in a rate case cannot be said to be entirely for the customers' benefit. In fact, these expenses may provide only a small amount of benefit to utility customers. Therefore, it is unfair, unjust, and unreasonable to require ratepayers to absorb 100% of these expenses. Staff's proposed 50/50 sharing of these expenses between shareholders and ratepayers is an

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[141] Ex. 200, *Staff revenue requirement cost of service report*, p. 135.

[142] KCPL initial brief, p. 109.

[143] Ex. 226, Majors surrebuttal, p. 55.

[144] *Id.*

equitable solution that is easily administered. An added benefit such a sharing mechanism creates is a strong incentive for KCPL to manage and contain its rate case expenses. Staff urges the Commission to adopt its position on this rate case expense sharing issue, disallowing the expenses associated with the engagement of Dr. Overcast as excessive and duplicative and recognizing in revenue requirement one-third of KCPL's remaining rate case expenses.

Marcella Mueth.

XVII. Management Audit

KCPL's Criticism of Staff's Analysis of KCPL's Administrative and General ("A&G") Costs is Misplaced

During the hearings, and now during the briefing stage of this case, Staff has not taken a position with respect to the management audit requested by MECG as noted in Staff's List of Issues, Item XVII – Management Audit.[145] However, at pages 110 through 116 of KCPL's initial brief, KCPL provides its objection to MECG's recommendation that the Commission should order an audit of KCPL's management. In its opposition, KCPL argues that MECG's FERC Form 1 analysis of A&G expenses be rejected because those reports cannot be relied on. [146] At page 110, paragraph 308, of its initial brief KCPL calls the FERC A&G Study a "…faulty analysis of KCP&L's administrative and general ("A&G") costs…" At page 114, paragraph 317, KCPL lumps Staff with MECG in its argument against using the FERC information as being "less reliable."

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[145] *Staff's Positions on Listed Issues,* p. 16.

[146] KCPL initial brief, p. 110.

Staff completed a similar study to that developed by MECG witness Kollen[147]; therefore, Staff addresses KCPL's arguments here regarding the A&G analysis presented in Staff's evidence that supports Staff's conclusion in its initial brief that excessive A&G costs directly impact KCPL's ability to earn its authorized ROE, and have a direct bearing on any argument presented by KCPL that regulatory lag mitigation measures are necessary because KCPL is not in direct control of its costs and the regulatory environment in Missouri is the sole reason it experiences any earning shortfalls.

In its initial brief at page 111, paragraph 310, KCPL claims it "…refuted Mr. Kollen's allegations that KCP&L's A&G costs were excessive." If KCPL believes it has refuted MECG witness' allegations with respect to the A&G analysis its consultant performed then KCPL must also believe it has refuted Staff's A&G analysis as well because Staff reached the very same conclusion MECG reached—that KCPL has excessive A&G costs—using the same FERC Form 1 reports. Staff submitted this conclusion beginning with the KCPL's 2010 rate case and repeated this same conclusion in each of KCPL's rate cases since then—Case Nos. ER-2010-0355, ER-2012-0174 and this case. [148]

Staff obtained publicly available FERC Form 1 reports for 2009 through 2014.[149] These reports are detailed standardized reports listing the operating results by

[147] Ex. 226- Staff witness Majors surrebuttal, p. 40.

[148] Ex. 226, Staff witness Majors surrebuttal, p. 237; Ex. 246, Staff's "Motion For Leave to Correct Testimony of Keith Majors."

[149] *Id*., pp. 40-41.

FERC account according to the USOA.[150] These are the very reports filed with the Commission as the utilities' annual report.

The FERC USOA provides detailed, sufficiently rigid guidelines for how electric utilities account for all items of expense, revenue, and investment. While utilities may vary in accounting for certain costs differently depending on the circumstances of each utility's specific operations, in general, the cost data is comparable among utilities.[151] KCPL is not unique to every other utility used in the two peer groups presented in Staff's A&G analysis. Even if one or two utilities in the FERC A&G analysis do not fit exactly all the characteristics of KCPL, it does not hold that all the utilities included in the analysis are not comparable to KCPL. KCPL's own analysis most likely includes utilities that do not meet all the characteristics of KCPL; however, Staff is unable to confirm anything about the characteristics used as KCPL study's lacks transparency. KCPL has consistently and over the entire study period of 2009 to 2014 been at the highest end of the two peer groups.

Staff used two peer groups in its A&G analysis. The first one, presented in its direct testimony, compared KCPL to all the other electric utilities operating in Missouri plus Westar Energy, the largest Kansas utility and a joint owner with KCPL of several generating facilities. The other peer group was presented in the surrebuttal testimony of Staff witness Majors and compared KCPL to a group of utilities KCPL chose. KCPL used this second peer group to compare itself to other comparable utilities, as it believes this can be used to determine how well KCPL is performing. One of the

[150] *Id*.

[151] *Id*., p. 46.

purposes of this peer group comparison is to assist KCPL in determining the compensation paid to its officers.

In its FERC Form 1 study, updated through 2014, Staff concluded KCPL has the highest A&G cost per customer, third highest A&G cost per MWh sold, and highest A&G cost per dollar of revenue. KCPL also has the highest A&G cost compared to its total operations and maintenance expense.[152] KCPL witness Bresette fails to refute Staff's A&G analysis. On the contrary, KCPL's own witness Wm. Edward Blunk in this case relies on FERC Form 1 data[153] to support KCPL's FAC request. KCPL witness Blunk used SNL's public database of FERC Form 1 data in his analysis.[154] KCPL witness Blunk testified that FERC Form 1 data comparisons are common in the electric utility industry, specifically used by the Edison Electric Institute (EEI) and the Brattle Group.[155] KCPL's rate of return witness Robert Hevert uses FERC data from SNL throughout his testimony.[156]

A study using FERC Form 1 data is not a new and novel concept. The Commission relied on this type of data and analysis in the Aquila acquisition case, Case No. EM-2007-0374. In that case KCPL witness William J. Kemp relied on FERC Form 1 data in his analysis of merger synergies.[157] He testified, "Data on realized synergies are most reliably and consistently obtained from utilities' annual filings to FERC on their

[152] Id., p. 41.

[153] Id., p. 46; Ex. 104, KCPL witness Blunk rebuttal, p. 21.

[154] Ex. 104, KCPL witness Blunk rebuttal, p. 21.

[155] Ex. 104, KCPL witness Blunk rebuttal, p. 21.

[156] Ex. 115- KCPL witness Hevert direct, pp. 10, 38, and 49. Ex. 116, Hevert rebuttal, pp. 21, 51, 72, 75, and 82.

[157] Ex. 226, Staff witness Majors surrebuttal, p. 44.

actual costs of utility operations (FERC Forms 1 and 2)."[158] KCPL witness Kemp obtained FERC Form 1 data concerning A&G expense and also used that data in his analysis.[159]

KCPL witness Bresette now abandons use of the FERC analysis KCPL witness Kemp relied on to support the Aquila acquisition which the Commission adopted. Apparently, KCPL now wants to disavow its association with the FERC Form 1s because the conclusions now do not support KCPL's position. The results of the FERC A&G analysis do not give the results to support KCPL's claim that it does not have high A&G costs. [160] The FERC analysis simply does not provide the result desired by KCPL to refute its high A&G costs.

Three KCPL witnesses, EEI, the Brattle Group, SNL Financial all use FERC Form 1 data for meaningful comparisons. KCPL witness Bresette is the only witness who cannot support this analysis, because the conclusions are not favorable to KCPL.[161]

KCPL presented to the Commission a purported study of 14 anonymous utilities' costs. KCPL indicated this "study" was conducted by a firm called PA Consulting Group.[162] There are several problems with relying on KCPL's "benchmarking study."

First, this is a 2013 year study based on 2013 financial results.[163] Staff's analysis was for the period 2009 to 2014, covering the period of time that Great Plains

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[158] Id., p. 44.

[159] Id., p. 45.

[160] Id., p. 45.

[161] Id., p. 47.

[162] Ex. 105, KCPL witness Bresette rebuttal Sch. RAB-2.

Energy has owned Aquila and its Missouri electric properties.[164] Staff's analysis relies on the most recent information available and covers several years, so the results can be compared to many different financial periods for consistency. The conclusion reached from reviewing these last several years is that KCPL consistently has had the highest, or one of the highest, A&G costs of the utilities included in the analysis.[165]

Second, the 292-page study attached to results provided by KCPL is essentially a collection of bar charts with no identification of the utilities involved in the study as anonymity of the participants and their results relative to each other was part of the agreement regarding participating in the study. KCPL alleges it is not able to identify the members of the study, two of which are publicly owned, and seven of which own and operate gas distribution assets. KCPL is investor owned and only owns electric assets. Staff does not have access to the "data collection and entry, data validation, reporting results and knowledge sharing sessions" described by witness Bresette. KCPL cannot produce any actual transparent and reproducible results of the utility comparisons that would refute Staff's A&G analysis and its conclusions. The Commission should not give any weight to KCPL's "benchmarking study" since KCPL is not able to support it.[166] The study was not done by KCPL or under its supervision. No party was able to substantiate the study or its conclusions.

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[163] KCPL initial brief, p. 113; Ex. 105, KCPL witness Bresette rebuttal, p. 5 and Sch. RAB-2.

[164] Ex. 200, Staff revenue requirement cost of service report, pp. 234-239; Ex. 226, Majors surrebuttal, pp. 51-54.

[165] Ex. 226, Majors surrebuttal, pp. 51-54 and Ex.t 246, Staff's "Motion For Leave to Correct Testimony of Keith Majors."

[166] Ex. 226, Majors surrebuttal, pp. 48-49.

KCPL cannot identify any of the other utilities in the anonymous study. By its own admission, each utility was not required to provide data for every area of cost.[167] KCPL's analysis compares KCPL to gas distributions companies. There is no meaningful comparison of KCPL's A&G expenses to, for example, the A&G expenses of Laclede or Missouri Gas Energy. Staff focused its study on Missouri electric utilities and Westar for its analysis, with the additional analysis of KCPL's peer utilities.[168] In the benchmarking study, each utility was not required to provide data for every area. (KCPL Brief, page 114].

Staff's analysis avoids these problems. The data used is readily accessible and does not rely on a third party to provide an analysis.[169] Staff's study omitted no data, because it relies on publicly available FERC Form 1 data. All aspects of Staff's analysis of the two peer groups was identified and support for the A&G study is available for review by any party to the case including KCPL.

KCPL's anonymous study should be given no weight by this Commission as KCPL failed to support its own testimony by not knowing any aspect of the PA Consulting Group's analysis.[170] KCPL is unable to identify who participated in the purported study by PA Consulting Group and unable to support any aspect of this analysis. The PA Consulting Group's "study" cannot be relied upon in this case.[171]

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[167] KCPL initial brief, p. 114.

[168] Ex. 226, Majors surrebuttal, p. 49.

[169] Ex. 226, Majors surrebuttal, p. 49.

[170] Ex. 226, Majors surrebuttal, pp. 48-49.

[171] Ex. 226, Majors surrebuttal, pp. 48-49.

As addressed in Staff's initial brief, KCPL is consistently has the highest or one of the highest A&G costs of all the utilities included in the analysis.[172] Staff measured KCPL's and the other utilities' A&G expenses using four metrics: A&G Expenses per Customer, A&G Expenses Per Megawatt Hour Sold, A&G Expenses per Dollar of Electric Revenue, and A&G Expenses Compare to Total Operations & Maintenance Expense. Staff's study used data from 2009 through 2014. [173] In 5 out of 6 years of the study, KCPL had the highest A&G expenses per customer. Using 2014 data, KCPL has the highest A&G expenses per customer. On the average, KCPL incurs $311.95 of A&G expenses per customer.[174] In 2 out of 6 years, KCPL had the highest A&G expenses per megawatt hour sold. Using 2014 data, KCPL has the third highest A&G expenses per megawatt hour sold, behind Empire and GMO. On the average, KCPL incurs $7.20 of A&G expenses per megawatt hour sold.[175] In 5 out of 6 years of the study, KCPL had the highest A&G expenses per dollar of electric revenues. Using 2014 data, KCPL has the highest A&G expenses per dollar of electric revenue. On the average, KCPL incurs A&G expenses of $0.0935 per dollar of revenue.[176] Put another way, for every dollar of revenue KCPL receives, a larger portion of that dollar goes to A&G expenses than the other utilities in the study. [177] The final metric is the most striking: in 5 out of 6 years of the study, KCPL has the highest A&G expenses

[172] Ex. 200, Staff's revenue requirement cost of service report, pp. 234-239; Ex. 226, Majors surrebuttal, pp. 51-54; Ex. 246, Staff's "Motion For Leave to Correct Testimony of Keith Majors."

[173] Ex. 226, Majors surrebuttal, p. 43.

[174] Ex. 246, page 12.

[175] Ibid.

[176] Ibid.

[177] Ex. 200, Staff revenue requirement cost of service report, p. 238.

compared to total operations and maintenance expense. Using 2014 data, KCPL has the highest A&G expenses compared to total O&M expense; 16.17% of KCPL's total operating expenses are spent on A&G costs. KCPL would have the Commission believe that these facts are aberrations, or irrelevant, but they speak for themselves. Staff expanded its A&G analysis by obtaining FERC Form 1 data from the thirteen companies in the peer group used by KCPL to determine executive compensation. Peer utilities as determined by KCPL have a similar size and business mix using three criteria: annual revenues, market value, and percentage of total revenues from regulated electric operations.[178] The results of the expanded study support Staff's overall conclusion: KCPL has high A&G expenses[179]:

Nicole Mers.

XVIII. Clean Charge Network

A. Should all issues associated with KCPL's Clean Charge Network be considered in a separate case, and not considered in this case?

B. Is the Clean Charge Network a public utility service?

C. If so, who pays for it?

KCPL says it *believes* that its Clean Charge Network can provide customer and public benefit in the following areas: beneficial electrification, environmental benefits, economic development, customer programs, and cost and efficiency benefits, then asserts that because of its belief all of its customers will benefit.[180] KCPL's belief is

[178] Majors surrebuttal, p. 51.

[179] Ex. 246, p. 15.

[180] KCPL initial brief, pp. 125-26, ¶¶ 347-351.

predicated on its unsubstantiated beliefs as to how the charging stations will actually be used. In other words, KCPL's belief is predicated on "build it and they will come."

Staff estimates over 99% of KCPL's Missouri customers do not own an electric vehicle, and even if 10,000 did they would still be less than 1% of KCPL's Missouri customers.[181] Public Counsel's witness Professor Dr. David E. Dismukes, Ph.D. (economics), uncontroverted testimony is that electric vehicles cost "some 65 percent higher than their gasoline-fueled equivalent" or more, that a "Tesla Model S [costs] from $71,000 to over $105,000," and that a number of surveys have shown the household income level associated with purchasing an electric vehicle was over $100,000, which is "some 111 percent above the Missouri median household income level."[182] He accurately concludes, "[KCPL's Clean Charge Network] program, therefore, will likely be providing a subsidy to relatively wealthier households, using funds derived from [KCPL's] entire customer pool."[183] In short, regardless of whether any benefits would follow from increased numbers of electric vehicles in KCPL's service area, KCPL has not substantiated in this case that its Clean Charge Network will increase the number of electric vehicles in its Missouri service area, *i.e.*, KCPL has not proven that if it builds the Clean Charge Network then there will be more electric vehicles in its service area, yet it is asking in this case that the Commission require its customers to pay for the $732,559 it has invested in its Clean Charge Network in Missouri as of May 31, 2015,[184]

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[181] Ex. 232, Staff witness B. Murray rebuttal, pp.. 6-7 (300 of 3,702,627).

[182] Ex. 304, Public Counsel witness Dr. Dismukes, Ph.D., rebuttal, p. 20.

[183] *Id*.

[184] Tr. 11:567-568; Tr. 11:593; Tr. 11:600.

which KCPL estimates to have a bill impact of 43 cents per year (corrected from 32 cents per year) to its average residential customer[185] and a bill impact of about $2 per year when completed.[186]

On page 124 of its initial brief KCPL hits on a crucial difference between electric vehicles and other users of utility-generated electricity—"the load happens to be mobile." What that mobility confers is the ability of the consumer to choose where to recharge his/her/its electric vehicle, *i.e.*, customer choice. Rational electric vehicle users will make that choice where it is most convenient or least cost—where the electric vehicle is sited when not in use—typically the user's residence or workplace. Because of that mobility, inherently there is no natural monopoly for electric vehicle charging stations, unless access to electricity to power them creates it. In other words, it is not the charging stations themselves that are monopolistic; any monopoly regarding them is derivative of the source of the electricity used to power them. KCPL's reliance on the prohibition against the resale of electricity in its tariff shows that it recognizes the foregoing.

Resale Prohibition

Despite KCPL witness Ives testifying that KCPL is not opposed to competing with other companies who want to make charging stations available to the public in the Kansas City area and that KCPL is not trying to "corner" the market for charging stations,[187] and similar statements of KCPL's counsel during his opening statement that

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[185] Tr. 11:567, ll. 9-19.

[186] Tr. 11:600-601; Tr. 11:606- 607.

[187] Tr. 11: 572.

Commission regulation of electric vehicles would not prevent competition from others,[188] in its initial brief KCPL again raises the prohibition against the resale of electricity in its tariff as preventing that competition.[189] Staff has two responses.

First, KCPL has not been applying its tariff to bar others from selling electric charging services in its service area in Missouri, undermining its argument that charging electric vehicles is reselling electricity. KCPL's own evidence in this case is that it had a total of 32 electric vehicle charging stations in its service area in August 2014 (10 Clean Cities, 10 Smart Grid and 12 others)[190] and it reported to Staff in response to a Staff data request that prior to January 26, 2015, it had 37 electric vehicle charging stations in its service area (Kansas and Missouri) plus an additional seven in GMO's service area.[191] Based on page 27 of schedule DRI-6 to the supplemental direct testimony of KCPL witness Darrin R. Ives (Ex. 119) there were well over 32 charging stations in KCPL's Missouri service area in 2014, and when Staff reviewed a Chargepoint website to which KCPL referred Staff in its response to a Staff data request that identifies charging stations where members of Chargepoint may charge their electric vehicles, Staff found that, as of March 19, 2015, "there [were] at least 151 electric vehicle charging stations in the Kansas City, Missouri region and another 40 electric vehicle charging stations in the Kansas City, Kansas region,"[192] and that payment may be

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[188] Tr. 11:536-37, 540-42.

[189] KCPL initial brief, p. 122, ¶¶ 338-339.

[190] Ex. 119, KCPL witness Ives supplemental direct, Sch. DRI-7, p. 1.

[191] Ex. 200, Staff revenue requirement cost of service report, pp. 205-206, fns. 112 & 113.

[192] *Id*. at 206.

required for charging at some of them.[193] KCPL has not brought a complaint to the Commission against any of the owners of these charging stations, and Staff is unaware if KCPL has even raised the issue with any of its retail customers who are operating electric charging stations for compensation from those who charge at them. KCPL's inaction shows that it does not view being compensated for charging electric vehicles violates its tariff.

Second, if KCPL's tariff provisions regarding the resale of electricity do bar others from selling electric vehicle charging service, then the Commission easily can eliminate that issue by ordering KCPL to modify its tariff so that its resale provisions no longer apply to the sale of electric vehicle recharging service. The Commission's charge is to promote public benefit, not to promote monopoly.

Carbon Emissions reductions

In response to KCPL's argument that its Clean Charge Network "will reduce carbon emissions and help the Kansas City region attain EPA regional ozone standards which is beneficial to the entire Kansas City region,"[194] Staff points out that KCPL's claims are not verifiable since there is no evidence in the record of any analysis of the impact of tailpipe emissions reductions on the overall air quality in the Kansas City area; KCPL's only support is studies performed by the State of California about regions in the

[193] *Id*., fn. 115.

[194] KCPL initial brief, p. 118, ¶ 326.

State of California. Further, Clean Air Act § 111(d) Clean Power Plan compliance is specific to electricity generating unit emissions, not vehicle emissions. [195]

Amounts at issue as of the May 31, 2015 true-up cut-off date.

As shown on Staff's revised true-up reconciliation (Ex. 260) the differences between Staff and KCPL on this issue are lines 9 (plant-in-service), 13 (depreciation reserve) on page 1 and lines 27 (revenue) and 35 (expense) on page 2 which total $294,509.

Conclusion:

As Staff advocates in its initial brief, the Commission should reject KCPL's request to have its retail customers undergird its speculative venture into providing electric vehicle charging stations on the basis that KCPL has not shown that electric vehicle charging stations are an electric service the Commission should regulate. Instead, at this point in time, the Commission should leave the risk of this venture with KCPL and treat it as a non-regulated activity or, at a minimum, if the Commission decides the Clean Charge Network is a public utility service, then the Commission should require KCPL to file tariff rate schedules that put the cost of the charging stations on those who charge their vehicles at them or who request their installation.

Nathan Williams.

[195] Ex. 232, Staff witness B. Murray rebuttal testimony, pp. 8-9, Sch. BMM-R1, pp. 1-3; Ex. 233 Staff witness B. Murray surrebuttal testimony pp. 7-8; EPA Fact Sheet: http://www2.epa.gov/sites/production/files/2014-05/documents/20140602fs-setting-goals.pdf

XIX. Income Tax Related Issues (including accumulated deferred income taxes or "ADIT") – what adjustments, if any, are necessary to ensure that KCPL's income tax allowance, including ADIT matters, is calculated appropriately?

The Staff's Initial Brief on ADIT on CWIP anticipated KCP&L's Initial Post-Hearing Brief on the issue so the Staff's Reply Brief on this issue will be very short. KCP&L in its Initial Post-Hearing Brief at paragraphs 356 and 361 - 365 asserts that the KCP&L situation is not the Ameren Missouri situation in File No. ER-2010-0166 because KCP&L has a net operating loss ("NOL") and the Commission's Report And Order in File No. ER-2010-0166 "was silent to whether an NOL was generated for Ameren."[196] KCP&L contends that as a consequence, ADIT in general and ADIT on CWIP do not provide cost free capital, since KCP&L has more deductions than it has revenues, during the test year / true-up period, 2014 through May 31, 2015, when the assets were being construction and were in CWIP. KCP&L argues it has not and will not receive a cash tax benefit from the IRS respecting the tax basis differences related to the CWIP. Pursuant to KCP&L's logic, any ADIT created when KCP&L was concurrently in a NOL position should not be used as an offset to rate base. KCP&L maintains the existence of a NOL differentiates itself from Ameren Missouri. Both arguments fail when the actual income taxes collected through the cost of service are considered.

However, KCP&L ratepayers provide fully normalized income taxes in cost of service regardless of whether KCP&L pays those taxes concurrently to the IRS. KCP&L realizes significant tax benefits through accelerated tax depreciation since accelerated

[196] KCP&L Initial Post-Hearing Brief, para. 364, p. 130, l. 4-5.

tax depreciation is not immediately flowed through to ratepayers. KCP&L seems to argue that it is not realizing all the benefits of accelerated depreciation due to a NOL position invalidating the fact ratepayers are providing millions of dollars in cash as income taxes in the cost of service.[197] In fact, at the Staff's mid-point rate of return, the Staff's revised true-up accounting schedules show $46.3 million of required current normalized income tax.[198]

ADIT related to CWIP should be an offset to ratebase.

XXV. Class Cost of Service, Rate Design, Tariff Rules and Regulations

On page 139 in paragraph 390 of its initial brief KCPL incorrectly states, "In fact, Staff witness Kliethermes admits that maintaining KCP&L's current $9/month residential customer charge would increase the amount of subsidization currently being provided by higher than average electricity users to the cost of service taken by lower than average electricity users. *Id*. [Tr.] at 457:6 through 458:17." Ms. Kliethermes did not testify that there is any subsidization of lower than average electricity users due to KCPL's current $9 per month residential customer charge. Instead, she testified she did not know if there was any such subsidization currently as shown by the following cross-examination of Ms. Kliethermes by KCPL's attorney Mr. Hack:

> Q. Do you believe that that kind of subsidy exists today under the -- under the customer charge and energy charge residential rates today?
>
> A. Could you say that one more time?

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[197] Ex. 226, Majors surrebuttal, p. 64, l. 21 – p. 65, l. 3.

[198] Ex. 259. Acctg. Sched. 1, p. 1, l. 7.

Q. Do you believe that the subsidy we just talked about being provided from higher-than-average-use customers to lower-than-average-use residential customers exists under KCPL's current rates, current energy charges and current customer charge?

A. So that would be under current -- so it would be -- if we're looking at current costs or current charges, that would be based on costs from the last case. And I don't remember off the top of my head what Staff's calculated customer charge was in the last case or what our -- or what our recommendation was.

Because I think -- you know, there's been changes in cost since the last rate case. And so are they currently -- I mean there's probably a little bit of that occurring, but I can't say from the last case to this case. I don't remember off the top of my head what our recommendation was in the last case.

* * * *

Q. So, *if there is some level of subsidy today from the energy charge to the customer charge* (Emphasis added.), that can only grow?

A. Then it could increase, yes.[199]

Cydney Mayfield.

[199] Tr. 11:457-58.

True-up

III. Transmission Fees Expense

A. What level of transmission fees expense should the Commission recognize in KCPL's revenue requirement?

As Staff stated in its initial brief, the appropriate level of transmission expense to be included in KCPL's cost of service is a true-up matter and, therefore, is addressed in this brief. By its December 12, 2014 ***Order Setting Procedural Schedule and Establishing Test Year and Other Procedural Requirements***, at the suggestion of KCPL and other parties, with regard to the true-up, the Commission ordered, "*The true-up period shall end May 31, 2015*." On a Missouri jurisdictional basis Staff recommends an annualized level of transmission expense of ****** ______________________________ ****** and transmission revenue of ****** ______________________________ ****** be recognized in KCPL's revenue requirement based on the upward trending of both transmission expense and transmission revenue during the five-month period of January 2015 through May 2015.[200]

KCPL and Staff used the same five-month time period for annualizing transmission expense, but KCPL used a different time period (the 12 months ending May 2015) for annualizing transmission revenue. The 12 months ending May 2015 do not capture the upward trend in transmission revenues and resulted in KCPL

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[200] Ex. 256 pp. 3-4 and 14.

understating transmission revenues in its proposed true-up revenue requirement.[201] Using different time periods to annualize transmission expense (five months) and transmission revenue (twelve months), as KCPL did initially, is obviously inconsistent.[202] However, since its initial true-up filing, KCPL has agreed with Staff's recommended annualized levels of transmission expense and transmission revenue set forth above, before other adjustments proposed by KCPL (in other words, these amounts do not include amounts attributable to the Independence Power & Light issue discussed toward the end of this brief).[203]

Jeffrey A. Keevil.

VII. *La Cygne Environmental Retrofit Project – What level of KCPL's investment in the La Cygne Environmental Retrofit project should be included in KCPL's Missouri rate base?*

As Staff stated in its initial brief, what should be included in KCPL's rate base for the La Cygne Environmental Retrofit project for purposes of setting rates in this case are the. amounts shown on KCPL's regulatory books in FERC USOA accounts 211, 312, 315, 316, 353, 355 and 356 for the La Cygne Environmental Retrofit project as of May 31, 205, which, as shown on page five of the true-up direct testimony of Staff witness Charles R. Hyneman (Exhibit 252), is $292,620,121.

Nathan Williams.

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[201] *Id.*

[202] *Id.*

[203] Ex. 166 p. 2; Ex. 260 (True-Up Reconciliation).

XXIV. *Revenues—What is the appropriate level of revenues for the large general service and large power classes to account for customers switching from one rate class to another?*

From Staff's perspective this true-up issue is resolved by the ***Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-hours, Revenues and Billing Determinants, and Rate Switcher Revenue Adjustments*** Staff entered into with Kansas City Power & Light Company that was filed on August 3, 2015.

Post True-Up Issues

Staff has two unresolved true-up issues that emanate from KCPL's attempt to include post true-up changes in its revenues and costs in its revenue requirement used for setting rates in this case. First, KCPL includes the net increase in costs versus revenues it anticipates it will incur from Independence Power & Light Company becoming a transmission owner in KCPL's transmission pricing zone in the Southwest Power Pool effective June 1, 2015.[204] Second, KCPL treats two revenue generating agreements with Kansas Municipal Energy Agency (one for December 1, 2014 to September 30, 2015 and the other for January 1, 2015 through September 30, 2015) where KCPL provides energy service on a firm capacity basis as if they already have ended for purposes of its revenue requirement in this case.[205]

KCPL has included these beyond the May 31, 2015 true-up cut-off date impacts despite the Commission's December 12, 2014 ***Order Setting Procedural Schedule and Establishing Test year and Other Procedural Requirements*** by which it, as

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[204] Ex. 251, Staff witness Featherstone true-up rebuttal, p. 12; Ex. 256, Staff witness Lyons true-up rebuttal, pp. 2-15.

[205] Ex. 251, Staff witness Featherstone true-up rebuttal, pp. 12-14.

recommended by KCPL and others, ordered, "The test year for this case is the twelve month period ending March 31, 2014, updated through December 31, 2014. ***The true-up period shall end May 31, 2015***" (Emphasis added.), and KCPL's following sentence in footnote 2 of the recommended procedural schedule: "The Moving Parties intend and understand that the End of True-up Period is the date after which expenditures made by KCP&L are not eligible for consideration in this general rate case."

Independence Power & Light

As stated above, footnote two of the *Proposed Procedural Schedule KCPL* filed on behalf of itself and certain other parties[206] states:

> **The Moving Parties intend and understand that the End of True-up Period is the date after which expenditures made by KCP&L are not eligible for consideration in this general rate case.** The Moving Parties agree that this does not mean, however, that the La Cygne Environmental Project must meet in-service criteria by May 31, 2015. So long as KCP&L can establish in True-up Direct Testimony that in-service criteria for the La Cygne Environmental Project have been met, and the Commission determines that the La Cygne Environmental Project is in-service, the Moving Parties agree that capital expenditures associated with the project recorded through May 31, 2015 – whether recorded at May 31, 2015 in plant-in-service or construction work in progress or retirement work in progress accounts – will be eligible for inclusion in rate base in this general rate case.[207] (emphasis added)

In its *Order Setting Procedural Schedule and Establishing Test Year and Other Procedural Requirements* the Commission ordered the true-up period ending date of May 31, 2015 which was proposed in the *Proposed Procedural Schedule* KCPL filed. Despite this, KCPL has included anticipated revenue reductions and cost increases

[206] *Proposed Procedural Schedule* filed December 3, 2014, in Case No. ER-2014-0370.

[207] *Id.* at Footnote 2; see also Ex. 251 pp. 10-11.

based on events occurring after the end of the true-up period in this case; specifically in regard to the Independence Power & Light ("IPL") issue, KCPL has proposed to increase its costs for transmission expense based on projected transmission expenses and revenues associated with IPL becoming a Transmission Owner in the Southwest Power Pool ("SPP").[208] However, KCPL witness Mr. Klote admitted at the true-up hearing on July 20, 2015, that KCPL has not yet received an invoice from SPP related to this issue and does not even expect to receive an invoice related to this issue until at least September—well beyond the May 31, 2015 date.[209] As stated in the *Proposed Procedural Schedule* filed by KCPL, "the End of True-up Period is the date after which expenditures made by KCP&L are not eligible for consideration in this general rate case." The Commission should reject KCPL's proposed IPL-related adjustment on this basis alone.

The Commission should also be aware that the May 31, 2015 true-up period ending date was a date KCPL needed for the then-expected in-service date of the environmental upgrades at its La Cygne station and plant additions at Wolf Creek Nuclear Generating Station; the May 31, 2015 true-up date was also important for Wolf Creek's refueling number 20 completion.[210] *KCPL chose* the May 31, 2015 true-up date to ensure all its plant additions would be completed, so that KCPL's investment in them would be included in its revenue requirement and resultant rates in this case.[211]

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[208] Ex. 251 p. 12; Ex. 256 p. 1.

[209] Tr. 21:2030-2031.

[210] Ex. 251 p. 9.

[211] *Id.*

With the in-service of environmental equipment at La Cygne Unit 1 on April 30, 2015 and La Cygne Unit 2 on March 24, 2015, and the completion Wolf Creek's plant additions along with its re-fueling, all of those items were included in the true-up result.[212] Other additions to plant included the advanced meters KCPL is currently installing in its Missouri jurisdiction and other plant investment completed for service as of the May 31, 2015 true-up cutoff date.[213] The true-up period ending date of May 31, 2015 was as close as possible to the issuance of an order by the Commission to still allow the Commission reasonable time to decide the various issues presented to it in the hearings.[214]

In the *Proposed Procedural Schedule* KCPL filed in this case on behalf of itself and other parties, KCPL proposed that:

> 8. In the unlikely event that there are delays in connection with placing the La Cygne Environmental Project in-service, the Moving Parties agree that KCP&L may delay the procedural schedule (and the effective date of rates) by either 30 or 60 days to allow a reasonable amount of time to address the delayed in-service. If this becomes necessary, KCP&L would advise the Commission and the parties no later than May 1, 2015 that either a 30- or 60-day delay is necessary. **Any such delay would not change the May 31, 2015 date agreed upon as the end of the true-up period.** Specifically, certain procedural schedule events beginning with Rebuttal Testimony would be delayed for either 30 or 60 days. [proposed revised procedural schedules omitted] (emphasis added)

Although in its *Order Setting Procedural Schedule and Establishing Test Year and Other Procedural Requirements* issued on December 12, 2014 the Commission did not adopt KCPL's proposed contingency dates, in its *Order Granting Motion to Amend*

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[212] *Id.*

[213] *Id.* at pp. 9-10.

[214] *Id.* at p. 10.

Procedural Schedule issued on January 14, 2015 the Commission stated, "On December 19, 2014, KCP&L filed a Motion for Reconsideration of Procedural Schedule, asking the Commission to add to the current procedural schedule the date of May 1, 2015 as the deadline after which the Commission will not consider a KCP&L request for Commission approval of either a 30-day or 60-day extension of the schedule" and in response ordered, "The *procedural schedule is amended to include May 1, 2015 as the last day to request an amendment* to the procedural schedule. All provisions of the existing procedural schedule remain in effect." (Emphasis added). Thereafter, on May 1, 2015,[215] KCPL filed its *Kansas City Power & Light Company's Notice Regarding May 1, 2015 Deadline* in which it stated:

> On January 14, 2015 the Missouri Public Service Commission issued an *Order Granting Motion to Amend Procedural Schedule* which amended the procedural schedule to include May 1, 2015 as the last day KCP&L could request an amendment to the procedural schedule due to delays in either: 1) placing the La Cygne Environmental Project in-service, or 2) possible delays in meeting in-service criteria for that project. **The Company is on target for completion of the aforementioned and sees no unforeseen delays necessitating a request of the contemplated 30-day or 60-day extension of the schedule.** Therefore, those additional dates held on the Commission calendar can be released. (emphasis added)

Clearly, KCPL fully understood that the date beyond which no further expenditures were to be considered in this case was May 31, 2015 – not some date in September 2015. May 31, 2015 was the date KCPL proposed and which certain other parties including

[215] While SPP filed the proposed tariff revisions regarding the IPL matter on *April 13, 2015*, and the FERC order regarding the SPP-IPL issue was issued June 12, 2015, KCPL was aware of this impending issue at least by February 2015. In other words, KCPL was aware of the issue at the time it made its filing in this case on May 1, 2015. However, KCPL did not inform Staff of the impending issue, but chose to be silent until the true-up. Ex. 256 pp. 4-6 and Schedule KL-tr1.

Staff joined, and May 31, 2015 was the date the Commission approved and ordered. The Commission should not allow KCPL to unilaterally extend this date.

As the Commission is aware, a true-up is used to include the impacts of *known* material events that occur after the update period, closer to when rates are going to be in effect.[216] During true-ups *all* the relevant and material cost components making up the revenue requirement calculation are considered—both those that cause an increase to revenue requirement and those that cause a decrease— several months past the update period.[217] A proper determination of a utility's revenue requirement is dependent upon considering all of the material components of the utility's rate base, return on investment, current level of revenues, along with operating costs, ***at the same point in time*****,** as stated by the Commission in KCPL's[218] 1983 general rate case, Case No. ER-83-49.[219] In this case the Commission established the update period to be through December 31, 2014, and the Commission established the true-up period ending date to be May 31, 2015, in its December 12, 2014, *Order Setting Procedural Schedule and Establishing Test Year and Other Procedural Requirements*.[220]

The Commission has previously recognized the significance of developing the revenue requirement calculation based on a consideration of all relevant factors and maintaining the proper revenue-expense-rate base match at a proper point in time. In KCPL's 1983 rate case the Commission stated:

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[216] Ex. 251 p. 5.

[217] *Id.* at pp. 5-6.

[218] KCPL rate cases were early uses of the true-up in Missouri. See Ex. 251 pp. 5-6.

[219] *Id.* at p. 7.

[220] *Id.* at p. 5.

> By specifying a grouping of accounts that should be trued-up, the Commission is not inferring [*sic*] that the parties should be limited to those items. Thus far, the Company appears to have proposed as many adjustments as possible to increase revenues. The Staff's adjustments appear to generally result in revenue decreases. **The Commission has no desire to entertain isolated adjustments, but seeks a "package" of adjustments designed to maintain the proper revenue-expense-rate base match at a proper point in time. Evidence of "picking and choosing" by a party with the intent of simply raising or lowering revenue requirement will not be condoned.**[221] (emphasis added)

Similarly, in KCPL's 2006 rate case the Commission stated:

> **The Commission agrees with Staff that it is important to match revenues and expenses as of a date certain.** As Staff points out, should the Commission accept KCPL's 113 employees in cost of service, then the Commission would also need to insert additional revenue from customer growth occurring after the known and measurable date of June 30.
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> * * *
>
> **KCPL management signed off on the stipulation that called for the true-up date in this case to be September 30.** [222]
>
> * * *
>
> If the Commission does not take a snapshot of a company's revenues and expenses as of the known and measurable date, **the true up date**, or any other date, for that matter, then what? KCPL's employee count, as well as a host of other revenues and expenses, has no doubt changed since the true-up hearing; the Commission will get yet another snapshot of those changes when KCPL files its next rate case. **To set just and reasonable rates, the Commission simply must match revenues and expenses as of a certain date.**[223] (emphasis added)

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[221] *In the Matter of Kansas City Power & Light Company for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, 26 Mo. P.S.C. (N.S.) 104, 110 (1983).

[222] Likewise, in this case KCPL signed off on the procedural schedule that called for the true-up period ending date to be May 31, 2015. See the *Proposed Procedural Schedule* filed in this case by KCPL on behalf of itself and other parties.

[223] *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 Begin the Implementation of its Regulatory Plan*, 15 Mo. P.S.C. 3d 138, 180 (2006).

KCPL's proposal to increase its transmission expense in this case based on projected transmission expenses and revenues associated with IPL becoming a Transmission Owner in KCPL's transmission pricing zone in the SPP should be rejected for several reasons. The order by which the FERC approved the proposed SPP tariff revisions was not issued until *June 12, 2015*, and only approved the proposed tariff revisions *subject to refund*.[224] Since the FERC approved the SPP tariff *subject to refund* and settlement discussions in the FERC proceeding are ongoing with no foreseeable conclusion, it is unclear whether or not KCPL will actually incur additional transmission expense as a result of IPL becoming a transmission owner in KCPL's transmission pricing zone.[225] As stated earlier, KCPL witness Mr. Klote admitted at the true-up hearing on July 20, 2015, that KCPL has not yet received an invoice from SPP related to this issue and does not even expect to receive an invoice related to this issue until at least September – well beyond the May 31, 2015 true-up period ending date.[226] Furthermore, KCPL has given no consideration to other changes in its cost of service that may occur after the true-up period ending date which could cause a decrease in its revenue requirement; rather, as it has done throughout this case, KCPL has singled out an individual expense[227] (precisely the type of "picking and choosing" with the intent of simply raising revenue requirement the Commission previously stated will not be

[224] Ex. 256 p. 6.

[225] *Id.* at 7.

[226] Tr. 21:2030-2031.

[227] Ex. 256 pp. 9, 13-14.

condoned).[228] Simply put, any costs related to the IPL issue are beyond the May 31, 2015 end of the true-up period (out of period); are not known and measurable (KCPL has not received any invoices, and the subject FERC order was subject to refund); and violate the matching principle and constitute single issue ratemaking since no consideration was given to other changes in KCPL's cost of service that may occur after the true-up period ending date. Accordingly, KCPL's proposed adjustment should be rejected.

Kansas Municipal Energy Agency Agreements

For the same reasons exhaustively discussed above, the Commission should not reach out four months past the true-up cut-off date of May 31, 2015 to September 30, 2015 to capture the reduction in KCPL's revenues due to the expiration of KCPL's December 1, 2014 to September 30, 2015 and January 1, 2015 to September 30, 2015 contracts with Kansas Municipal Energy Agency for purposes of KCPL's revenue requirement for setting rates in this case. The KCPL revenue requirement differences between Staff and KCPL due to these contracts are shown on Staff's revised true-up reconciliation (Ex. 260) on lines 28 (To annualize firm Bulk Sales—Energy) and 29 (Firm Bulk Sales Capacity & Fixed) on page 2, respectively, $584,390 and $229,694, and total $814,084.

[228] *In the Matter of Kansas City Power & Light Company for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, 26 Mo. P.S.C. (N.S.) 104, 110 (1983).

Conclusion

WHEREFORE, for the reasons set forth in its initial brief and above, Staff requests the Commission to adopt the Staff's position on each and every issue that was presented in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or by electronic mail to all counsel of record this 3rd day of August, 2015.

/s/ Nathan Williams