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Witness: *Paul R. Harrison*  
Sponsoring Party: *MoPSC Staff*  
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**MISSOURI PUBLIC SERVICE COMMISSION**

**UTILITY SERVICES DIVISION**

**SURREBUTTAL TESTIMONY**

**OF**

**PAUL R. HARRISON**

**Great Plains Energy, Incorporated  
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

**FILE NO. ER-2010-0356**

*Jefferson City, Missouri  
January 2011*

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

Staff            Exhibit No GMO-222NP  
Date 1/8/11 Reporter LMB  
File No. ER-2010-0356

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**SURREBUTTAL TESTIMONY**

**OF**

**PAUL R. HARRISON**

**Great Plains Energy, Incorporated  
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

**FILE NO. ER-2010-0356**

Q. Please state your name and business address.

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

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

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

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

A. Yes, I am. I contributed to the Staff Cost of Service Report filed on  
November 17, 2010, in this case, and to the Staff Cost of Service Report filed on  
November 10, 2010 in the Kansas City Power & Light Company (KCPL) rate case designated  
as File No. ER-2010-0355. I also filed rebuttal testimony and surrebuttal testimony in the  
KCPL case.

Q. Please provide a summary of your surrebuttal testimony in this case.

A. The purpose of my surrebuttal testimony is to address the rebuttal testimony  
of KCP&L Greater Missouri Operations Company (GMO or Company) witness  
Melissa K. Hardesty concerning several income tax issues.

Q. On whose behalf are you filing surrebuttal testimony?

A. I am filing my testimony as a member of the Staff of the Missouri Public  
Service Commission.

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1 Q. Are you filing surrebuttal testimony on behalf of GMO?

2 A. No. However, because GMO's affiliate, KCPL, did not represent GMO's  
3 interests when representing it with respect to the matter of the Iatan 2 advanced coal tax  
4 credits, Staff has had to file this testimony in this case and similar surrebuttal testimony in the  
5 KCPL rate case. KCPL never should have denied GMO's ownership share of the advanced  
6 coal investment federal income tax credits. As an 18% partner in Iatan 2, GMO was entitled  
7 to its share of the tax credits, based on its 18% ownership interest. By failing to advance  
8 GMO's interests in the tax credits, KCPL neglected its responsibilities to one of its Iatan  
9 partners and to one of its affiliates. KCPL chose to keep all the tax credits granted by the  
10 Internal Revenue Service (IRS) when those credits were given for the entire Iatan 2 project.  
11 Because of this unusual position where one affiliate—the dominate affiliate KCPL—did not  
12 act in the interest of its smaller affiliate—GMO, Staff finds itself in the unique position of  
13 defending that GMO should receive a significant benefit (a portion of the Iatan 2 tax credit),  
14 thus creating an image of acting on GMO's behalf.

15 **EXECUTIVE SUMMARY**

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

17 A. This testimony addresses three income tax related issues.

18 First, KCPL, an affiliate of GMO, and GMO are alleging that certain investment tax  
19 credit (ITC) normalization rules promulgated by the Internal Revenue Service (IRS) will be  
20 violated if the Commission accepts the Staff's position that 18% of the advanced coal tax  
21 credits (tax credits) the IRS awarded for the Iatan Project be allocated to GMO in this case.  
22 Staff disagrees with their contention on this matter, and will also present some alternative rate  
23 recommendations on this issue if the Commission determines their arguments have merit.

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1 More specifically, GMO is addressing this issue on the sole basis that providing any benefit of  
2 these tax credits to GMO would result in violation of the federal tax code. However, this is  
3 not the issue. The basis for the disagreement between GMO, KCPL and Staff is essentially  
4 the failure of GMO's and KCPL's parent Company, Great Plains Energy, Incorporated  
5 (Great Plains or GPE), and KCPL to deny GMO any part of the benefit of the \$125 million in  
6 tax credits resulting from its 18% ownership of Iatan 2.

7 While the normalization rule violation is an important element of this issue, it is one  
8 that could have been completely avoided had KCPL acted on behalf of GMO in a timely and  
9 prudent matter to proportionally share the tax benefits awarded to the Iatan 2 owners by  
10 the IRS, or at least those owners who are required to pay federal income taxes, namely KCPL,  
11 GMO and The Empire District Electric Company (Empire). The IRS awarded \$125 million in  
12 tax credits related to the newly constructed Iatan 2, and KCPL decided to attempt to keep all  
13 those tax benefits for itself. Empire believed it was entitled to its share of the tax credit and  
14 was forced to arbitrate, successfully, to obtain the tax benefits associated with its ownership  
15 share of Iatan 2. GMO was not so lucky. KCPL did not request the IRS nor notify the  
16 arbitration panel that another Iatan 2 partner and KCPL affiliate, GMO, was an 18% owner of  
17 Iatan 2. As no one represented the interests of GMO or its customers during the dispute,  
18 GMO was not awarded any of the tax benefits. Through the rebuttal testimony of  
19 Ms. Hardesty, KCPL is now attempting to hide behind the normalization rules of the IRS and  
20 claiming a potential tax normalization violation if Staff's position prevails. Even if a  
21 normalization violation is the ultimate result of KCPL's past actions regarding this matter—  
22 that is not the real issue. The real issue is that GMO is entitled to the tax benefit from its 18%  
23 ownership of Iatan 2, and has been deprived of that benefit by the actions and inactions of

1 KCPL. KCPL has only itself to blame for the situation in which it has put itself and GMO  
2 regarding this matter and the way it treated its Iatan partners, more specifically GMO. While  
3 Empire was initially treated in the same manner as GMO, as a non-affiliated third party, it had  
4 a voice and that voice was heard. Ultimately, Empire was able to obtain the tax benefits it  
5 deserved through arbitration. GMO and its customers had no one similarly representing their  
6 interests. Accordingly, Staff requests that GMO be appropriately allocated a portion of the  
7 advanced coal credits based upon its 18% ownership share of Iatan 2 , and that KCPL  
8 be required to re-apply, at its shareholders' expense, to the IRS for a further reallocation  
9 (Empire got a reallocation) of 18% of the \$125 million Iatan 2 tax benefit to GMO.

10 The second issue concerns whether a portion of KCPL's Kansas City (KC) earnings  
11 tax should be allocated to the state of Kansas and to GMO's retail operations.

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

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

19 **ADVANCED COAL TAX CREDITS**

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

21 A. KCPL applied for certain Iatan 2 advanced coal tax credit benefits from the  
22 IRS related to its ownership of the qualifying Iatan 2 generating unit. An advanced coal tax  
23 credit is considered as one type of investment tax credit, or ITC. KCPL was initially allocated

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1 | the qualifying advanced coal tax credits by the IRS in the amount of \$125 million related to  
2 | its qualified investment in Iatan Unit 2 in 2008.

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

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

8 |       Q.     Who are the other owners of Iatan 2?

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

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

14 |       A.     Yes. The amount of KCPL's share of the advanced coal ITC for Iatan 2 was  
15 | reduced to \$107.3 million through arbitration proceedings, initiated by certain joint owners  
16 | other than GMO, in September 2010. Empire, KEPCO and MJMEUC filed a notice to  
17 | arbitrate in 2009, asserting that they were entitled to receive proportionate shares (or the  
18 | monetary equivalent) of the \$125 million of advanced coal ITC awarded to KCPL. I have  
19 | cited the pertinent paragraphs below of the Final Arbitration Award and attached to this  
20 | testimony the Final Arbitration Award from the Arbitration Panel as Schedule 1; the  
21 | Tax Allocation Agreement among GPE and Affiliates as Schedule 2; and the Memorandum of  
22 | Understanding between the IRS and KCPL to this testimony as Schedule 3.

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1           Based on the pleadings, testimony, exhibits and briefs of the parties, the Highly  
2 Confidential findings and opinions of the Arbitration Panel indicated KCPL acted  
3 inappropriately regarding these tax credits. The Arbitration Panel concluded KCPL acted in  
4 bad faith as follows:

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8 Accordingly, IT IS HEREBY ORDERED:

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28 Q. What were the results of the arbitration process?

29 A. While KCPL initially received approval from the IRS for \$125 million  
30 tax credit, the amount of the advanced coal ITC awarded to KCPL was later reduced to  
31 \$107.3 million when arbitration proceedings, with certain joint owners other than GMO, were  
32 finalized in September 2010. The arbitrators determined that KEPCO and MJMEUC were  
33 not entitled to a share of the ITCs, but that \$17.7 million of advanced coal ITC should be

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1 allocated to Empire based upon its ownership of 12% of Iatan Unit 2. However, the  
2 arbitrators ruled that KEPCO and MJMEUC were entitled to reimbursement by KCPL of  
3 costs charged to these entities through the Iatan 2 monthly partnership billings by KCPL for  
4 costs it incurred to determine if it qualified for the Iatan 2 tax credits. It is noteworthy that  
5 KCPL also charged GMO for costs relating this evaluation but, unlike the other partners,  
6 GMO received no reimbursement of those costs nor any of the tax benefits.

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

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

12 Q Was GMO included in these arbitration proceedings?

13 A No. At no time was GMO considered for its share of these tax credits despite  
14 having an 18% ownership share of this generating unit, and accordingly being in an  
15 equivalent position to Empire in relation to the Iatan 2 unit. GMO was also charged the costs  
16 incurred by KCPL to determine whether KCPL qualified for the tax credit.

17 Q Why didn't GMO seek a proportionate share of the advanced coal ITC when  
18 KCPL initially filed the advanced coal tax credit application with the IRS or through the  
19 arbitration proceedings?

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

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

4 A. No. On September 9, 2010, Staff had a meeting with KCPL personnel on the  
5 subject of income taxes, during which the subject of the advance coal tax credits was  
6 discussed. During this meeting Staff inquired why GMO was not allocated its share of the tax  
7 credits. The only explanation given was that it would be an income tax normalization  
8 violation for KCPL to allocate the credits to GMO at that point. Staff asked KCPL what party  
9 represented the interests of GMO and its customers during the arbitration proceedings, but  
10 Staff never received an answer from KCPL.

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

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

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

23 KCPL Response:

24 12. There was no communication whereby GMO employees provided  
25 input to GPE or KCPL employees regarding the advanced coal credit  
26 issue before GPE acquired GMO. After the acquisition, employees of  
27 KCPL also represented GMO's interests regarding the advanced coal  
28 investment tax credit and the interests and positions of each affiliated

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1                    company were considered throughout the process of assessing and  
2                    recording the advanced coal credits...

3            Q.     Does GMO have any employees?

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

7            Upon the completion of the July 14, 2008 acquisition of the former Aquila, Inc.  
8 (Aquila) by GPE, those Aquila employees retained by GPE were transferred to KCPL's  
9 operations. Consequently, there was no one at GMO who could solely represent the interest  
10 of that entity or that entity's customers. With respect to these Iatan 2 tax credits, KCPL had a  
11 conflict of interest respecting GMO—put simply KCPL did not represent Empire in this  
12 matter and it certainly did not represent the interests of GMO regarding these Iatan 2 tax  
13 credits.

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

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

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

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1 KCPL responded as follows:

2 1. A private letter ruling would only be needed if the Commission  
3 intends to allocate credits to GMO. The cost to file for a private letter  
4 ruling would include the IRS filing fee of \$10,000 to \$15,000 and the  
5 costs to hire outside tax counsel to assist in the process. These costs  
6 would be avoided if we did not need to file for the private letter ruling.

7 2. KCPL estimates that it would take approximately 6 to 12 months for  
8 the IRS to issue a private letter ruling on this matter.

9 3. The Company did not pursue an allocation to GMO of the coal  
10 credits after the arbitration proceedings were final with Empire because  
11 the Company believes that there is a significant risk that all of the  
12 credits (including the amounts allocated to KCP&L and Empire) may  
13 be forfeited under a normalization violation if the Company pursued  
14 allocation of credits to GMO with the IRS.

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

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

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

23 A. Yes. KCPL indicated that GMO applied for these tax credits after the Aquila  
24 acquisition by GPE in October 2008. In response to Data Request 386 (Item 8), KCPL stated  
25 that GMO requested in October 2008 consideration of the Iatan 2 tax credit filing an  
26 "application for the advanced coal investment tax credits after it became aware that a new  
27 allocation round was available and that there was still \$250 million of credits to be awarded."  
28 In this response, KCPL further stated that the IRS denied GMO's request and the IRS further

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1 "indicated that the full \$125 million of credits available for the Iatan 2 plant project had  
2 already been awarded to KCP&L in the 2007 allocation round."

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

4 A. KCPL indicated in its response to Data Request 386 that after the Company  
5 received notice that the IRS denied the GMO application, Empire started its arbitration  
6 proceedings "to have [tax] credits reallocated to [Empire] by the panel." KCPL further stated:

7 The Company did not include GMO in the arbitration proceedings  
8 since it felt strongly that income taxes were the responsibility of each  
9 owner and because GMO's application had just been denied. In  
10 December 2009, the arbitration panel issued its order to allocate credits  
11 to Empire (via an amended Memorandum of Understanding by the  
12 IRS). The order does not require any credits to be reallocated or the  
13 monetary equivalent of its proportionate share of the credits to be paid  
14 to GMO.

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

18 Q. What is the Memorandum of Understanding referenced above?

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

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

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

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

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

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

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

15           A.     Yes. There is a partnership agreement between all the owners of Iatan 2 which  
16 specifically identifies each partner's ownership share and all related cost responsibilities.  
17 Like all the other partners, GMO is required to pay for all costs to operate, maintain, repair  
18 and construct plant additions for Iatan 2. All costs associated with this plant are billed to each  
19 of the partners based on ownership share percentage. GMO must pay monthly payments for  
20 its share of these costs, yet was conveniently not given an opportunity to obtain the offsetting  
21 benefits of the advanced coal tax credits. In fact, GMO was billed and paid for the costs  
22 incurred by KCPL to research and determine if KCPL would qualify for the Iatan 2 tax  
23 credits. This was one of the things the arbitration panel addressed in its ruling where KCPL

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1 had to reimburse KEPCO and MJMEUC of costs charged to these entities through the Iatan 2  
2 monthly partnership billings by KCPL for costs it incurred to determine if it qualified for the  
3 Iatan 2 tax credits.

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

6 A. Yes. Staff made an adjustment to allocate to GMO its 18% ownership share of  
7 the Iatan 2 advanced coal tax credit. Since GMO was not represented during the arbitration  
8 proceedings, owns 18% of Iatan 2, and has its own rate structure and customer base,  
9 Staff made an adjustment of \$26.5 million to allocate GMO its proportionate ownership share  
10 of the advanced coal tax credit. Given that GMO (and ultimately its customers) were  
11 responsible for payment of 18% of the Iatan 2 unit's construction cost, it is only fair and  
12 prudent to also allow GMO (and ultimately its customers) 18% of the tax benefits associated  
13 with Iatan 2 construction. With GMO's revenue requirement being determined independently  
14 from KCPL, GMO's cost of service should be developed to include all applicable credits as  
15 well as its costs.

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

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

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1 and the KCPL election of investment tax credit to this testimony as Surrebuttal Schedules 5,  
2 and 6, respectively:

3 46(f)(2)(A) COST OF SERVICE REDUCTION.—If the taxpayer's  
4 cost of service for ratemaking purposes or in its regulated books of  
5 account is reduced by more than a ratable portion of the credit  
6 determined under subsection (a) and allowable by Section 38  
7 (determined without regard to this subsection), or

8 46(f)(2)(B) Rate Base Reduction.—If the base to which the taxpayer's  
9 rate of return for ratemaking purposes is applied is reduced by reason  
10 of any portion of the credit determined under subsection (a) and  
11 allowable by section 38 (determined without regard to this subsection).

12 Regulation 1.46-6(b)(4):

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

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

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

30 (A) The record of the proceeding,

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

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

37 (iv) This subdivision (iv) describes a situation that is not an indirect  
38 reduction to cost of service or rate base by reason of all or a portion of

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

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

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

20 Utility companies electing Option 2 amortize ITC to operating income  
21 by reducing the cost of service. The regulations provide that "cost of  
22 service" is the amount required by a taxpayer to provide regulated  
23 goods or services. Cost of service includes operating expenses  
24 (including salaries and cost of materials, etc.) maintenance expenses,  
25 depreciation expense, tax expense, and interest expense.

26 **The regulations state that any effect on taxpayers permitted return**  
27 **on investment that results in a reduction in the taxpayer's rate base**  
28 **does not constitute a reduction in cost of service even though, as a**  
29 **technical ratemaking term, "cost of service" ordinarily includes a**  
30 **permitted return on investment. In addition, taking into account a**  
31 **deduction for the additional interest that the taxpayer would pay**  
32 **or accrue if the credit were unavailable in determining federal**  
33 **income tax expense ("synchronization of interest") does not**  
34 **constitute a reduction in cost of service for purposes of Section**  
35 **46(f)(2). As described above, the regulation consider any direct or**  
36 **indirect reductions to cost of service or rate base in assessing**  
37 **compliance with the normalization requirements**

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

3 A. No. Staff does not believe the determination of GMO getting its  
4 18% ownership share of the Iatan 2 tax credits should be based on the tax normalization rules  
5 "scare tactic" employed by KCPL.

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

11 KCPL put the normalization rule violation in play when it excluded GMO from the  
12 Iatan 2 tax credits. KCPL could have completely avoided the normalization rule issue if it  
13 had acted in a prudent matter to share in the tax benefits awarded to the Iatan 2 owners by the  
14 IRS, or at least the owners who are required to pay federal income taxes. Just as Empire was  
15 entitled to its share of these tax credits, GMO also had a stake in those benefits. KCPL was  
16 awarded \$125 million for the newly constructed Iatan 2 and made the decision to keep all the  
17 tax benefits for itself. It took an arbitration ruling which KCPL appealed and lost for Empire  
18 to obtain any of the tax benefits from its ownership share. KCPL did not request the IRS nor  
19 notify the arbitration court that another Iatan 2 partner and KCPL affiliate, GMO, was an  
20 18% owner of Iatan 2. Since KCPL did not represent the interest of GMO or its customers,  
21 GMO was not awarded any of the tax benefits.

22 KCPL is now attempting to hide behind the "protection" of the IRS code to support its  
23 position on this issue, citing potential tax normalization violations. Even if KCPL's

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1 contentions on this point are correct, that is still not the issue. KCPL has only itself to blame  
2 for the situation they find themselves in regarding the matter in which it treated its partners,  
3 more specifically GMO. While Empire was initially treated in the same matter as GMO by  
4 KCPL, as a non-affiliated third party it had a voice and a means to express that voice.  
5 Accordingly, Empire was able to obtain the tax benefits to which it was entitled. Since GMO  
6 had no one representing it, Staff has had to be its voice. Staff recommends that GMO be  
7 allocated its 18% ownership share of the Iatan 2 advanced coal tax credits by requiring KCPL  
8 to re-apply, at its shareholders' expense, to the IRS for a further reallocation of the  
9 \$125 million Iatan 2 tax benefit to allow GMO its fair share.

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

12 A. It may be possible. But this situation is clearly the doing of KCPL and its  
13 decision not to represent GMO in the proper allocation of the tax benefits generated by  
14 Iatan 2. KCPL should be required to take all actions necessary to ensure GMO is treated  
15 fairly regarding the Iatan 2 tax credits. This means KCPL should return to the IRS and  
16 request a reallocation to include GMO in the division of the advanced coal credits.

17 KCPL should take all necessary steps to ensure there are no adverse tax consequences  
18 to either GMO, KCPL or their parent, GPE, resulting from an appropriate allocation of Iatan 2  
19 tax credits to GMO. The Company must commit to seek the proper approvals from the IRS  
20 so as not to violate the all important normalization rules.

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

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

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

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

14           A.     No. Staff agrees with how Ms. Hardesty's description of the consequences of  
15 a possible normalization violation. Deferred taxes would have to be paid back to the IRS.  
16 Staff does not want this result to happen and is not supporting this happening in any way.  
17 What is necessary to happen is to require KCPL, as the representative of GMO, to go back to  
18 the IRS and seek a ruling to reallocate GMO its proper share based on its ownership  
19 percentage of the Iatan 2 tax credits.

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

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

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

6           A.     Even though the IRS initially denied the application of GMO in late 2008 to  
7 receive these tax credits, KCPL was seeking an increased amount over the \$125 million level  
8 the IRS awarded to the Iatan 2 project. In this instance, Staff believes the IRS would  
9 reallocate the amount to GMO because KCPL would not be requesting any more than the  
10 \$125 million level it has already received, a portion of which went to Empire after the  
11 arbitration ruling. Certainly, it would have been the proper time to request IRS approval of an  
12 allocation of tax credits to GMO at the time of Empire reallocation, but KCPL made a  
13 deliberate and conscious decision not to include its newly acquired affiliate. But since this  
14 was not done, KCPL should be required to seek another reallocation of this important tax  
15 benefit for GMO. Not to do so would be detrimental to GMO and its customers.

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

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

19           A.     KCPL should pay for all costs relating to any letter ruling or approvals from  
20 the IRS from its corporate funds. Customers should not have to pay for KCPL's mistake in  
21 judgment in not earlier seeking to provide GMO a share of these tax benefits. KCPL did not  
22 meet its responsibilities to its Iatan 2 partner and its affiliate, GMO, and did not represent

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1 | GMO's interest. KCPL should take the responsibility for its decisions and be required to take  
2 | all necessary actions to remedy this situation.

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

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

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

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

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

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

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

19 | Q. KCPL addresses the Company's opinion concerning Staff's re-allocation  
20 | adjustment on pages 8 through 12 of Ms. Hardesty's rebuttal testimony wherein she  
21 | consistently insists that the Company believes that this allocation would be a violation of the  
22 | normalization rules and would have to be repaid to the IRS by KCPL for a normalization  
23 | violation. Does the Staff agree with the Company's opinion?

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

12           Q.     Ms. Hardesty states on page 9, Line 22 through Page 10 Line 9, of her rebuttal  
13 that:

14                         Several private letter rulings have interpreted the restrictions against  
15 indirect reductions of cost of service related to ITC and have held that  
16 various ratemaking proposals would violate the normalization  
17 requirements. Most recently, PLR 200945006 addressed the sale of  
18 regulated gas distribution assets from one utility to another. At issue  
19 was whether the accumulated deferred ITC of the selling utility could  
20 be transferred to the buying utility to ultimately be used to reduce the  
21 rates of the buying utility. The IRS National Office held that the selling  
22 utility would violate the requirements of the investment tax credit  
23 normalization rules set forth in former section 46(f), if it directly or  
24 indirectly passes the accumulated deferred ITC balance to another  
25 taxpayer who did not claim such ITC tax benefits. Therefore any direct  
26 or indirect allocation of credits to GMO from KCP&L would also be  
27 normalization violation under IRS regulations.

28 Does Staff agree with this conclusion?

29           A.     No. The current issue is not about the accumulated deferred ITC of KCPL.  
30 The advanced coal tax credit is a current ITC that was just awarded to KCPL. As of

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1 September 30, 2010, KCPL's advanced coal ITC amount that was already filed with the IRS  
2 and used is \$29,151,153 with the remaining \$77,957,534 unused or committed. Therefore,  
3 Staff believes that if the Company is truly concerned about an alleged normalization violation  
4 resulting from rate treatment of the advanced coal ITC, then it has other options besides  
5 choosing to perpetuate an inequitable and unfair allocation of tax benefits between the two  
6 affiliates. These other options include establishing another arbitration that includes GMO, or  
7 filing amended or corrected consolidated tax returns to correct the mistake of not allocating  
8 GMO its appropriate share of the advanced coal credit. If, for some reason, the IRS does  
9 determine that adoption of the Staff's recommendation on this issue would result in a  
10 normalization violation, then KCPL needs to determine the best way to prevent this violation  
11 from occurring and negatively affecting not only KCPL's cost of service but also GMO's cost  
12 of service and its customers. An appropriate resolution of this issue must include both  
13 allocation of a proportionate amount of advanced coal credits to GMO and protection of the  
14 Company's normalization tax benefits.

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

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

- 20 1) Order KCPL to obtain a letter ruling on this point from the IRS, determining  
21 whether such Commission action would actually result in normalization rules  
22 violation; and/or  
23 2) Order KCPL to initiate an arbitration proceeding for GMO.

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

- 4 1) Order a proportionate reduction in GMO's cost of service in an unrelated cost  
5 of service area to pass on the equivalent of the proportionate tax credit benefit  
6 to GMO and its customers; or  
7 2) Leave all of KCPL's coal tax credits as a reduction to its cost of service, but  
8 for ratemaking purposes impute a proportionate amount of credits (18% of the  
9 total) as a reduction to GMO's cost of service in addition to KCPL's share of  
10 credits; or  
11 3) Order a reduction to KCPL's and GMO's Return on Equity of 50 basis points  
12 on account of KCPL's imprudence and abuse of its affiliated relationship with  
13 GMO in this instance.

14 Q. Did the Arbitration Panel make any ruling regarding the possibility the IRS  
15 rejected KCPL and Empire's request for re-allocation of the Iatan 2 tax credits?

16 A. Yes. The Arbitration Panel indicated that if the IRS did not provide Empire  
17 with a share of the tax benefits of Iatan 2 then KCPL was ordered to pay Empire for its share  
18 of the tax benefits. The Arbitration Panel stated: [Surrebuttal Schedule 1-5]

19 \*\* \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_ \*\*

24 Q. Could the Commission make the same ruling relating to GMO's share of the  
25 Iatan 2 tax credits?

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1           A.     Yes. If the IRS does not grant KCPL and GMO's request for the re-allocation  
2 of the these tax credits, then the Commission should reflect the equivalent dollar amounts for  
3 GMO just as the Arbitration Panel indicated would be done for Empire if the IRS rejected  
4 Empire's re-allocation of the coal tax credits. Just as it was the Arbitration Panel's desire to  
5 make Empire whole, the Commission should assume the role of the Arbitration Panel and  
6 make certain GMO gets it fair and equitable share of these tax credits. The Commission  
7 should protect the GMO entity which KCPL refused to do—the Commission needs to step in  
8 and become the equivalent of GMO's "arbitration panel" and protect the interest of GMO and  
9 its customers.

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

12           A.     Yes. On page 11 of Ms. Hardesty' rebuttal testimony, she states that the  
13 amortization of the advanced coal tax credits cannot occur faster than over the life used for  
14 book purposes of depreciation for Iatan Unit 2. The proposed amortization period for the  
15 advanced coal credits by the Company and Staff is currently 50 years in the case. However,  
16 Staff has requested a longer depreciable book life for Iatan Unit 2 in this case (60 years).  
17 KCPL argues that if the depreciable book life of Iatan 2 is ultimately authorized to be  
18 something other than 50 years in this proceeding, then the life used for the amortization of the  
19 advanced coal ITC should also be changed to be consistent with the Iatan 2 life.

20           Q     Does the Staff agree with this argument?

21           A.     Yes. Staff agrees that the amortization period for the advanced coal credits  
22 should align with the ratable portion of the credit over the life used for book purposes of  
23 depreciation for Iatan Unit 2. It is the Staff's position that when the Commission renders its

1 decision in this case on the depreciation issues, the Staff and Company can recalculate the  
2 amount of amortization for the advanced coal credit in this rate case to be consistent with  
3 those findings.

4 **KANSAS CITY (KC) EARNINGS TAX**

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

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

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

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

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1           A.     No. On page 7, Lines 9-13, of Ms. Hardesty's rebuttal testimony she states  
2 that "While they agree that some of the work spent by KCP&L employees in Kansas City,  
3 Missouri locations may support Kansas KCP&L customers and GMO customers. They  
4 believe that work performed at locations by KCP&L employees outside of Kansas City,  
5 Missouri also supports Kansas City, Missouri KCP&L customers."

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

8           A.     Yes. This tax expense is no different from any other expense incurred by  
9 KCPL which is allocated between KCPL Missouri, KCPL Kansas and KCPL GMO  
10 customers. For example, all of KCPL's and GMO's payroll, benefits and all other costs are  
11 allocated between all of KCPL's entities which include the portion that is allocated to the  
12 state of Kansas. To the extent work is "performed at locations by KCP&L employees outside  
13 of Kansas City, Missouri" for KCPL's Missouri operations, those costs are properly allocated  
14 to the appropriate jurisdiction. Just as it is proper to allocate those outside the Kansas City  
15 area costs to KCPL Missouri operations it is equally important to allocate KCPL earnings tax  
16 costs incurred by being in the Kansas City location to the other jurisdictions and GMO entity.

17          Q.     On page 7, Lines 13-15, of Ms. Hardesty's rebuttal testimony she states that  
18 "Because GMO files its own Kansas City earning tax return, it makes more sense to adjust  
19 GMO's payroll factor on its Kansas City earnings tax return than to allocate a portion of  
20 KCP&L tax to GMO." Is GMO's payroll included in GMO's Kansas City earnings tax  
21 return?

22          A.     No. KCPL's includes GMO's payroll in its KC earnings tax calculation,  
23 therefore GMO's KC earnings tax is understated. One of the three factors (payroll) is zeroed

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Paul R. Harrison

1 out on GMO's KC earnings tax return and included in KCPL's KC earning tax return.  
2 Therefore, even though there are three factors used in determining the allocation percentage  
3 that will be applied to total net income in determining GMO's taxable net profit, the  
4 allocation percentage is decreased by including GMO's payroll in KCPL's KC earnings tax.  
5 By decreasing the allocation percentage, KCPL is decreasing GMO's taxable net profit that is  
6 multiplied by the 1% earnings tax to arrive at the total amount of GMO's KC earnings tax  
7 owed to Kansas City.

8 Data Request 120.4 asked if:

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

11 The Company responded:

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

18 In conclusion, since KCPL is using GMO's payroll to increase the amount of  
19 KCPL's KC earnings tax paid, then a portion of it should be allocated to GMO. In addition,  
20 Staff believes that since the Kansas City earnings tax are required as a right to conduct  
21 business in the city of Kansas City, Staff believes that a portion of the earnings taxes should  
22 be allocated to Kansas customers. This tax expense is no different from any other expense  
23 incurred by KCPL which is allocated between KCPL Missouri, KCPL Kansas and  
24 KCPL GMO customers.

1 **EXCESS DEFERRED INCOME TAXES**

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

4 A. On page 12, Lines 17 through 20 of Ms. Hardesty' rebuttal testimony, she  
5 says, in part, that the Staff includes an adjustment to flow back excess deferred taxes over the  
6 approximate depreciable book life of the property for which those deferred taxes are  
7 associated. She further states that the Staff's adjustment does not appear to be adjusted for the  
8 change in depreciable book lives recommended by the Staff in this case. She concludes that  
9 since book depreciation is needed to determine how much of the timing differences reverse in  
10 a period, a change to the book depreciation rates will impact the amount of excess deferred  
11 taxes that should be flowed back to ratepayers.

12 Q. Does Staff agree with this statement?

13 A. Staff is in agreement that the excess deferred income taxes are amortized over  
14 the approximate depreciable book life of the property for which the deferred taxes were  
15 created. Staff also agrees that the excess deferred taxes should not flow back to ratepayers  
16 any more rapidly than by a proportionate amount of deferred taxes which represents the  
17 timing differences related to that property when it reverses for the same time period. Staff  
18 also agrees that Staff's adjustment is not adjusted for the change in depreciable book life. It is  
19 the Staff's position that when the Commission renders its decision in this case on the  
20 depreciation issue, the Staff and Company can recalculate the amount of amortization for the  
21 excess deferred income taxes in this rate case.

22 Q. Does this conclude your surrebuttal testimony?

23 A. Yes, it does.

**BEFORE THE PUBLIC SERVICE COMMISSION**

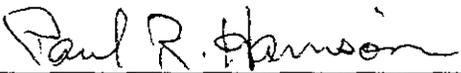
**OF THE STATE OF MISSOURI**

In the Matter of the Application of KCP&L )  
Greater Missouri Operations Company for )  
Approval to Make Certain Changes in its ) File No. ER-2010-0356  
Charges for Electric Service )

**AFFIDAVIT OF PAUL R. HARRISON**

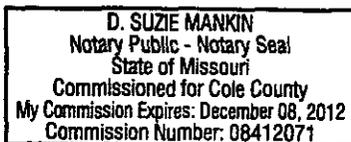
STATE OF MISSOURI )  
 ) ss.  
COUNTY OF COLE )

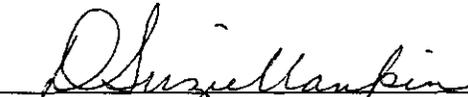
Paul R. Harrison, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 30 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.



Paul R. Harrison

Subscribed and sworn to before me this 12<sup>th</sup> day of January, 2011.





Notary Public

**SCHEDULE 1**

**HAS BEEN DEEMED**

**HIGHLY CONFIDENTIAL**

**IN ITS ENTIRETY**

**HC**

**NP**  
Version

**SCHEDULE 2**

**HAS BEEN DEEMED**

**HIGHLY CONFIDENTIAL**

**IN ITS ENTIRETY**

**HC**

**NP**  
Version

**SCHEDULE 3**

**HAS BEEN DEEMED**

**HIGHLY CONFIDENTIAL**

**IN ITS ENTIRETY**

**HC**

**NP**  
Version

KANSAS CITY POWER & LIGHT COMPANY

1330 BALTIMORE AVENUE

KANSAS CITY, MISSOURI 64141

June 17, 1975

MICHAEL SELTZER  
VICE PRESIDENT  
AND TAX COUNSEL

RECEIVED  
KANSAS CITY SERVICE CENTER

JUL 02 1975  
INTERNAL REVENUE SERVICE  
KANSAS CITY, MISSOURI 64170

CERTIFIED MAIL

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

Re: Investment Credit; Public  
Utility Property Election

Dear Sir:

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

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

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

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

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

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

Internal Revenue Service Center

- 2 -

June 17, 1975

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

Respectfully submitted,

KANSAS CITY POWER & LIGHT COMPANY

By

  
Vice President

(CORPORATE SEAL)

ms-hm

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

Accounting Department

KANSAS CITY POWER & LIGHT COMPANY

1330 BALTIMORE AVENUE

KANSAS CITY, MISSOURI 64141

MICHAEL SELTZER  
ASSISTANT SECRETARY AND  
ASSISTANT TREASURER

February 24, 1972

RECEIVED

FEB 28 1972

SERVICE CENTER DIRECTOR  
INTERNAL REVENUE SERVICE CENTER  
2308 E. BANNISTER ROAD  
KANSAS CITY, MISSOURI 64170

CERTIFIED MAIL

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

Re: Investment Credit; Public  
Utility Property Election

Dear Sir:

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

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

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

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

Director  
Internal Revenue Service Center

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

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

Respectfully submitted,

KANSAS CITY POWER & LIGHT COMPANY

(CORPORATE SEAL)

By Walter D. Moore  
Assistant Secretary and  
Assistant Treasurer.

ms-rmk

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

RECEIVED

FEB 28 1972

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46(f)(9) [Repealed]

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

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

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

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

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

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



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



### (a) In general

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

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

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

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

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

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

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

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

- (i) Public utility property within the meaning of section 46(c)(3)(B) (other than nonregulated communication property described in §1.46-3(g)(2)(iv)) or
- (ii) Property used predominantly in the trade or business of the furnishing or sale of steam through a local distribution system or of the transportation of gas or steam by pipeline, if the rates for the trade or business are regulated within the meaning of §1.46-3(g)(2)(iii).

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

### (2) Cost of service

(i)

- (A) For purposes of this section, cost of service is the amount required by a taxpayer to provide regulated goods or services. Cost of service includes operating expenses (including salaries, cost of materials, etc.), maintenance expenses, depreciation expenses, tax expenses, and interest expenses. For purposes of this section, any effect on a taxpayer's permitted return on investment that results from a reduction in the taxpayer's rate base does not constitute a reduction in cost of service, even though, as a technical ratemaking term, cost of service ordinarily includes a permitted return on investment. In addition, taking into account a deduction for the additional interest that the taxpayer would pay or accrue if the credit were unavailable in determining Federal income tax expense (synchronization of interest) does not constitute a reduction in cost of service for purposes of section 46(f)(2). This adjustment to Federal income tax expense may be taken into account in determining cost of service for the regulated accounting period or periods that include the taxable year to which the adjustment relates or for any subsequent regulated accounting period.
- (B) See paragraph (b)(3)(ii)(B) of this section for rules relating to the amount of additional interest that the taxpayer would pay or accrue if the credit were unavailable.
- (ii) In determining whether, or to what extent, a credit has been used to reduce cost of service, reference shall be made to any accounting treatment that affects cost of service. Examples of such treatment include reducing by all or a portion of the credit the amount of Federal income tax expense taken into account for ratemaking purposes and reducing the depreciable bases of property by all or a portion of the credit for ratemaking purposes.

### (3) Rate base

- (i) For purposes of this section, rate base is the monetary amount that is multiplied by a rate of return to determine the permitted return on investment.
- (ii)
- (A) In determining whether, or to what extent, a credit has been used to reduce rate base, reference shall be made to any accounting treatment that affects rate base. In addition, in those cases in which the rate of return is based on the taxpayer's cost of capital, reference shall be made to any accounting treatment that reduces the permitted return on investment by treating the credit less favorably than the capital that would have been provided if the credit were unavailable. Thus, the credit may not be assigned a cost of capital rate that is less than the overall cost of capital rate, determined on the basis of a weighted average, for the capital that would have been provided if the credit were unavailable.
- (B) For purposes of determining the cost of capital rate assigned to the credit and the amount of additional interest that the taxpayer would pay or accrue, the composition of the capital that would have been provided if the credit were unavailable may be determined—
- (1) On the basis of all the relevant facts and circumstances; or
- (2) By assuming for both such purposes that such capital would be provided solely by common shareholders, preferred shareholders, and long-term creditors in the same proportions and at the same rates of return as the capital actually provided to the taxpayer by such shareholders and creditors.
- For purposes of this section, capital provided by long-term creditors does not include deferred taxes as described in section 167(l)(3)(G) or 168(e)(3)(B)(ii).
- (C) If a taxpayer's overall rate of return is based on a deemed or hypothetical capital structure, paragraph (b)(3)(ii)(B) of this section shall be applied by treating the deemed or hypothetical capital as if it were the capital actually provided to the taxpayer and determining the composition of the capital that would have been provided if the credit were unavailable in a manner consistent with such treatment.
- (iii) Whether, or to what extent, a credit has been used to reduce rate base for any period to which pre-June 23, 1986, rates apply will be determined under 26 CFR 1.46-6(b)(3) and (4) (revised as of April 1, 1985) if such a determination avoids disallowance of a credit that would be disallowed

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

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

- (i) Cost of service or rate base is also considered to have been reduced by reason of all or a portion of a credit if such reduction is made in an indirect manner.
- (ii) One type of such indirect reduction is any ratemaking decision in which the credit is treated as operating income (subject to ratemaking regulation) or is treated less favorably than the capital that would have been provided if the credit were unavailable. For example, if the credit is accounted for as nonoperating income on a company's regulated books of account but a ratemaking decision has the effect of treating the credit as operating income in determining rate of return to common shareholders, then cost of service has been indirectly reduced by reason of the credit.
- (iii) A second type of indirect reduction is any ratemaking decision intended to achieve an effect similar to a direct reduction to cost of service or rate base. In determining whether a ratemaking decision is intended to achieve this effect, consideration is given to all the relevant facts and circumstances of each case, including, but not limited to—
  - (A) The record of the proceeding,
  - (B) The regulatory body's orders or opinions (including any dissenting views), and
  - (C) The anticipated effect of the ratemaking decision on the company's revenues in comparison to a direct reduction to cost of service or rate base by reason of the investment tax credits available to the regulated company.
- (iv) This subdivision (iv) describes a situation that is not an indirect reduction to cost of service or rate base by reason of all or a portion of a credit. The ratemaking treatment of credits may affect the financial condition of a company, including the company's ability to attract new capital, the cost of that capital, the company's future financial requirements, the market price of the company's securities, and the degree of risk attributable to investment in those securities. The financial condition may be reflected in certain customary financial indicators such as the comparative capital structure of the company, coverage ratios, price/earnings ratios, and price/book ratios. Under the facts and circumstances test of paragraph (b)(4)(iii) of this section, the consideration of a company's financial condition by a regulatory body is not an indirect reduction to cost of service or rate base, even though such condition, as affected by the ratemaking treatment of the company's investment tax credits, is considered in the development of a reasonable rate of return on common shareholders' investment.

#### **(c) General rule**

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

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

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

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

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

- (ii) The regulatory body described in section 46(c)(3)(B) that has jurisdiction for ratemaking purposes with respect to such trade or business is an agency or instrumentality of the United States, and
- (iii) This regulatory body makes a short supply determination and the determination is in effect on the date such property is placed in service.

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

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

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

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

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

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

### **(f) Limitations**

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

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

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

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

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

- (i) Before the date any inconsistent determination described in paragraph (f)(2) of this section is put into effect and
- (ii) On or after such date and before the date a subsequent consistent determination (whether or not final) is put into effect.

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

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

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

- (i) For purposes of section 46(f)(1), on the taxpayer's cost of service or rate base for ratemaking purposes or
- (ii) In the case of a taxpayer that made an election under section 46(f)(2), on the taxpayer's cost of service, for ratemaking purposes or in its regulated books of account, or on the taxpayer's rate base for ratemaking purposes.

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

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

- (i) The term inconsistent refers to a determination that is inconsistent with section 46(f)(1) or (2) (as the case may be). Thus, for example, a determination to reduce the taxpayer's cost of service by more than a ratable portion of the credit would be a determination that is inconsistent with section 46(f)(2). As a further example, such a determination would also be inconsistent if section 46(f)(1) applied because no reduction in cost of service is permitted under section 46(f)(1).
- (ii) The term consistent refers to a determination that is consistent with section 46(f)(1) or (2) (as the case may be).
- (iii) The term final determination means a determination with respect to which all rights to appeal or to request a review, a rehearing, or a redetermination have been exhausted or have lapsed.
- (iv) The term first final inconsistent determination means the first final determination put into effect after December 10, 1971, that is inconsistent with section 46(f)(1) or (2) (as the case may be).

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

- (i) The date it is issued (or, if a first final inconsistent determination, the date it becomes final) or
- (ii) The date it becomes operative.

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

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

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

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

### **(g) Ratable methods**

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

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

### **(h) Elections**

#### **(1) Applicability of elections**

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

- (ii) Section 46(f)(1) applies to all of the taxpayer's section 46(f) property in the absence of an election under either section 46(f)(2) or (3). If an election is made under section 46(f)(2), section 46(f)(1) does not apply to any of the taxpayer's section 46(f) property.
- (iii) An election made under the last sentence of section 46(f)(1) applies to that portion of the taxpayer's section 46(f) property to which section 46(f)(1) applies and which is short supply property within the meaning of paragraph (c)(2) of this section.
- (iv) If a taxpayer makes an election under section 46(f)(2) and makes no election under section 46(f)(3), the election under section 46(f)(2) applies to all of the taxpayer's section 46(f) property.
- (v) If a taxpayer makes an election under section 46(f)(3), such election applies to all of the taxpayer's section 46(f) property to which section 167(l)(2)(C) applies. Section 46(f)(1) or (2) (as the case may be) applies to that portion of the taxpayer's section 46(f) property that is not property to which section 167(l)(2)(C) applies. Thus, for example, if a taxpayer makes an election under section 46(f)(2) and also makes an election under section 46(f)(3), section 46(f)(3) applies to all of the taxpayer's section 46(f) property to which section 167(l)(2)(C) applies, and section 46(f)(2) applies to the remainder of the taxpayer's section 46(f) property.

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

- (i) [Reserved]

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

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

- (i) If a taxpayer is required by a regulatory body having jurisdiction over less than all of its property to account for the credit under a determination that is inconsistent with section 46(f)(1) or (2) (as the case may be), such credit shall be disallowed only with respect to property subject to the jurisdiction of such regulatory body.
  - (ii) For purposes of this paragraph (j), a regulatory body is considered to have jurisdiction over property of a taxpayer if the property is included in the rate base for which the regulatory body determines an allowable rate of return for ratemaking purposes or if expenses with respect to the property are included in cost of service as determined by the regulatory body for ratemaking purposes. For example, if regulatory body A, having jurisdiction over 60 percent of an item of corporation X's section 46(f) property, makes a determination which is inconsistent with section 46(f), and if regulatory body B, having jurisdiction over the remaining 40 percent of such item of property, makes a consistent determination (or if the remaining 40 percent is not subject to the jurisdiction of any regulatory body), then 60 percent of the credit for such item will be disallowed. For a further example, if regulatory body A, having jurisdiction over 60 percent of X's section 46(f) property, has jurisdiction over 100 percent of a particular generator, 100 percent of the credit for such generator will be disallowed.
  - (iii) For rules which provide that the 3 elections under section 46(f) may not be made with respect to less than all of the taxpayer's property eligible for the election, see paragraph (h)(1)(i) of this section.
- (2) [Reserved]

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

**(1) Scope**

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

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

## (2) Ratable amount

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

- (A) The stranded cost of the property is the cost of the property reduced by the amount of such cost that the taxpayer has recovered through regulated depreciation expense during the period before the property becomes deregulated public utility property;
- (B) The recoverable stranded cost of the property at any time is the stranded cost of the property that the taxpayer will be permitted to recover through rates after such time; and
- (C) The restoration percentage for the property is determined by dividing the reduction in rate base remaining to be restored with respect to the property immediately before the property becomes deregulated public utility property by the stranded cost of the property.

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

- (A) The stranded cost of the property is the cost of the property reduced by the amount of such cost that the taxpayer has recovered through regulated depreciation expense during the period before the property becomes deregulated public utility property;
- (B) The cumulative stranded cost recovery for the property at any time is the stranded cost of the property that the taxpayer has been permitted to recover through rates on or before such time; and
- (C) The flowthrough percentage for the property is determined by dividing the amount of credit with respect to the property remaining to be used to reduce cost of service immediately before the property becomes deregulated public utility property by the stranded cost of the property.

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

## (4) Effective/applicability dates

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

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

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

- (A) The last date on which the utility's rates are determined under the rate order in effect on December 21, 2005; or
- (B) December 21, 2007. [Reg. §1.46-6.]

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

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

Response to Hyneman Chuck Interrogatories – Set MPSC\_20101005  
Date of Response: 10/27/2010

Question No. :0386

Reference the following statement in GPE's 2009 10-K. "Great Plains Energy and KCP&L recognized deferred federal tax benefits of \$37.2 million in 2009 and \$29.2 million of current and \$45.0 million of deferred federal tax benefits in 2008. However, tax laws require KCP&L to reduce income tax expense for ratemaking and financial statement purposes ratably over the life of the plant. Therefore, Great Plains Energy and KCP&L concurrently recognized a separate deferred advanced coal ITC expense to offset the current and deferred federal tax benefit. At December 31, 2009, Great Plains Energy and KCP&L had \$111.4 million of deferred advanced coal ITC. Great Plains Energy and KCP&L will recognize the tax benefits of the ITC over the life of the plant once it is placed in service. See Note 17 for a related legal proceeding." 1. Please provide each and every source document used by GPE to conclude that this federal income tax credit (not a tax timing difference but a permanent difference) is required to be used to reduce income tax expense for ratemaking purposes ratably over the life of the plant 2. Please provide each and every source document used by GPE to conclude that this federal income tax credit (not a tax timing difference but a permanent difference) is required to be used to reduce income tax expense for financial statement purposes ratably over the life of the plant. 3. For items one and two above, please describe KCPL's understanding of these documents and how it determined the required ratemaking treatment noted above. 4. For items one and two above, please describe KCPL's understanding of these documents and how it determined the required financial statement treatment noted above. 5. Does KCPL believe that FAS 71 (or its new title under the recent GAAP codification) will allow for different ratemaking treatment than treating this tax credit to reduce income tax expense for ratemaking purposes ratably over the life of the plant? Please explain. If yes, what are the available alternative treatments? 6. Does KCPL believe that FAS 71 (or its new title under the recent GAAP codification) will allow for different financial reporting treatment than treating this tax credit to reduce income tax expense for financial statement purposes ratably over the life of the plant? Please explain. If yes, what are the available alternative treatments? 7. What was the dollar amount of the tax credit taken for this Iatan 2 Advanced Coal Tax Credit on GPE's tax returns for 2007, 2008 and 2009? 8. Please list each and every reason why GPE will not allow GMO, as a co-owner of the Iatan 2 construction project, to share in the benefits of this tax credit? 9. Please provide a list of the names of each and every KCPL employee who was involved in the decision not to share this tax credit with GMO and who provided input regarding the decision not to share the credit with GMO. Provide all documentation in KCPL's or GPE's possession regarding the decision not to share the credit with GMO. This documentation should include but not be limited to the studies, analyses, memorandums, letters, e-mails. 10.

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

RESPONSE:

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

3&4. Please see the file attached named "Q0386\_2007 Advanced Coal Credit.doc" for the analysis done by KCPL to determine how the coal credits should be accounted for ratemaking and financial statement purposes

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Please see a description of how the credit is being accounted for in KCPL's books and records in the file attached for question 3&4. The file named "Q0386\_Coal ITC FAS109.xls" contains a summary of all entries booked through September 30, 2010 related the advanced coal tax credits.

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

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

Prepared by: Melissa Hardesty, Tax  
Teresa Laidacker, Legal

Files attached:

Privilege Log - DR 386\_10-26-2010.pdf  
Q0386\_2007 Advanced Coal Credit.doc  
Q0386\_Coal ITC FAS109.xls  
Q0386 MO Verification.pdf

**SCHEDULE 8**

**HAS BEEN DEEMED**

**HIGHLY CONFIDENTIAL**

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**SCHEDULE 9**

**HAS BEEN DEEMED**

**PROPRIETARY**

**IN ITS ENTIRETY**

**SCHEDULE 10**

**HAS BEEN DEEMED**

**PROPRIETARY**

**IN ITS ENTIRETY**

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