BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Construction Audit and Prudence Review of Environmental Upgrades To Iatan 1 and Iatan Common Plant, Including All Additions Necessary for These Facilities to Operate.	)))))	**Case No. EO-2010-0259**

REPLY BRIEF OF KANSAS CITY POWER & LIGHT COMPANY
AND KCP&L GREATER MISSOURI OPERATIONS COMPANY

COME NOW Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO") (collectively the "Companies"), by and through counsel, and for their Reply Brief in response to the Staff's Initial Brief filed on May 21, 2010 state as follows:

I. INTRODUCTION

The Companies regret that it was necessary to take the Commissioners' time to address the very serious systemic problems (Tr. 512-523) that became apparent during the hearings to address issues related to the continuing Staff audit of the Iatan 1 Air Quality Control System (AQCS) and the common plant associated with Iatan 1 and 2. However, given the serious allegations of Staff—particularly related to the Companies' practices related to discovery, the Companies' cost tracking procedures, and the alleged violations of the Companies' Code of Ethical Business Conduct, and the serious financial consequences that will result from a repeat performance by Staff in the upcoming Iatan 2 rate cases--the Companies continue to believe that they had little choice but to address these Staff allegations head on and in detail, and discuss the failure of the Staff to follow the clear and unequivocal directives of the Commission to complete its Iatan 1 construction audit and prudence review by December 31, 2009.

As explained in the Companies' Initial Brief, KCP&L and GMO take very seriously the Staff allegations in this proceeding, and reject in total any implication that the Companies' actions in any way have caused Staff to be unable to complete its Iatan 1 construction audit and prudence review. In the Staff's Initial Brief, the Staff does not repeat these broad allegations—probably because there is not a shred of competent and substantial evidence in the record to support them—and instead focuses its Brief on the Staff's erroneous assertion that "the Staff does not believe that the Commission can lawfully do in a non-contested proceeding what KCPL/GMO has requested that this Commission do even though the Commission has held an evidentiary hearing." (Staff Br. at 7) As explained below, this Staff assertion is simply incorrect, and appears to be nothing more than an argument to support the Staff's strong inference that Staff can not be held accountable by the Commissioners in this proceeding for their failure to comply with the Commission's order to complete the Iatan 1 prudence review and construction audit by December 31, 2009, or for that matter, for any other Staff failure or omission that has come to light in this proceeding. This Staff position is self-serving and utter nonsense.

In this Reply Brief, the Companies will address the arguments of the Staff in the general order presented by Staff in their Initial Brief. However, it may be more important to note at the outset what matters the Staff's Initial Brief chooses to ignore:

(1) Staff does not support its allegations contained in the December 31, 2009 Reports that allege that the Companies have been dilatory and have not cooperated in discovery matters.

(2) Staff does not support its allegation contained in the December 31, 2009 Reports that the Companies' cost control and tracking system is inadequate.

(3) Staff does not repeat its allegation contained in the December 31, 2009 Reports that the Companies' personnel have violated the Code of Ethical Business Conduct by failing to cooperate with the Staff's investigation.

(4) Perhaps most importantly, Staff fails to even attempt to explain its own failure to be open and transparent with the Commissioners, the Companies, and other interested stakeholders in the last KCP&L and GMO rate cases about the real status of the prudence review and construction audit of Iatan 1 and common plant. Rather than explaining that the Iatan 1 prudence review and construction audit had not yet commenced, Staff witnesses and counsel left the impression in those rate cases that a construction audit and prudence review was well underway—although not complete. As the record demonstrates in this case, this impression was clearly erroneous since, as Mr. Schallenberg explained in his deposition and the evidentiary hearings in this case, the Iatan 1 prudence review and construction audit did not even commence until the Commission issued its April 15th Order. (Tr. 185-86; 509-10; 537; 546-47)

(5) Staff's Initial Brief does not explain the reason why Staff never corrected the record after it filed its Direct Testimony of Cary Featherstone in the KCP&L and GMO rate cases regarding the correct status of the Iatan 1 prudence review and construction audit. The Staff had many opportunities in the KCP&L and GMO rate cases to provide the Commissioners with the correct information that the Iatan 1 construction audit and prudence review had not yet commenced:

(a) in the Staff's rebuttal or surrebuttal testimony in the KCP&L and GMO cases filed by Staff on March 11, 2009 and April 7, 2009, and March 13, and April 9, 2009, respectively;

(b) at the April 6th motions hearings when Staff counsel suggested the audit could be completed within six (6) months;

(c) when the Commission issued its April 15th Order directing the filing of the construction audit by June 19, 2009;

(d) in Staff counsel's opening statement in the KCP&L rate case presented on April 20, 2009;

(e) at June 8th on-the-record proceeding to consider the Non-Unanimous Stipulations and Agreement when Mr. Schallenberg clearly indicated to Commissioner Davis and the Commission that the Staff would not object to filing its completed Iatan 1 prudence review and construction audit by December 31, 2009;

(f) when the Commission issued its June 10th Order extending the deadline for completing and filing the construction audit and prudence review by December 31, 2009;

(g) or at any other point during the KCP&L and GMO rate case proceedings when Staff understood that it had given the Commissioners, the Companies and other stakeholders the definite impression that the Staff's prudence review and construction audit was underway;

(h) when the Staff filed their June 19th Preliminary Report, the Staff could have explained that the construction audit and prudence review had barely begun and was incomplete since Mr. Schallenberg was working on the audit alone at that point in time (Tr. 512). Staff could have also explained that the Preliminary Report was the only

"audit plan" that existed, and that Mr. Hyneman and Mr. Majors would be joining the audit team in the future. (Tr. 96, 186);

(i) in the December 31, 2009 Reports, the Staff could have disclosed that the prudence review and construction audit of Iatan 1 had not been underway at the time of filing of the direct testimony in the rate cases (Tr. 186), as the Staff had led the Commissioners, the Companies, and other interested stakeholders to believe, and therefore the prudence review and construction audit was not completed, as directed by the Commission.

(5) Staff does not explain why the Staff did not bring to the Commissioners attention the fact that the "Coordination Procedure for Construction Audits" that was attached to Mr. Schallenberg's Surrebuttal Testimony in the KCP&L rate case that included a clear discussion that there would be a coordination of efforts between the Utility Operations Division and the Utility Services Division in construction audits--had been canceled at the time it was filed with the Commission. (Tr. 554-55) Staff's Initial Brief does not provide the Commissioners with any explanation whatsoever of how such a blatant error could have occurred, or why the coordination procedure was canceled, or who on Staff had the authority to cancel this coordination procedure. This omission is particularly hard to understand since this "cancelled" procedure was attached to the Surrebuttal Testimony of Mr. Schallenberg, the Director of Utility Services Division, one of the two divisions that had been expected to coordinate their efforts in the construction audits in the past.

Companies' Attempt to Be Open and Transparent

The Companies have attempted to maintain an open and cooperative relationship with the Commission, the Staff, and other interested stakeholders. (Tr. 270) In particular, KCP&L entered into the negotiations of the Regulatory Plan approved in Case No. EO-2005-0329 in good faith, and with the expectation that Staff and other parties would continue to collaborate in an open and transparent fashion throughout the Regulatory Plan.

The Companies have attempted to keep the Staff and other parties informed regarding the progress of completion of the Comprehensive Energy Plan projects that were approved in the Regulatory Plan in Case No. EO-2005-0329. KCP&L also provided Staff and other Signatory Parties to the Regulatory Plan Stipulation And Agreement with KCP&L Strategic Infrastructure Status Reports every three months (Tr. 82-83; 129-33). These 16 KCP&L Quarterly Status Reports[1] included extensive discussions of costs, schedules, and any issue that was materially impacting the success of the project. The KCP&L Quarterly Status Reports were followed-up with in person meetings with the Staff and other Signatory Parties in which the key construction, regulatory and legal personnel made lengthy presentations and answered questions related to all major events that affected the Iatan 1 project. (Tr. 131)

This effort by KCP&L to keep the Staff and the Signatory Parties to the Regulatory Plan Stipulation informed about the progress and issues related to the Comprehensive Energy Projects has been unprecedented in scope. From KCPL's perspective, the primary reason for the quarterly meetings was to encourage a transparent and open process related to the prudence review and construction audit.

[1] KCP&L has provided a seventeenth Quarterly Status Report to the Signatory Parties since the conclusion of the hearings in this matter.

In this case, Mr. Rush also explained the extensive discovery process and the massive amount of information that has been requested of the Companies, and provided to the Staff, both the Services Division and the Operations Division. He described the Companies' efforts to implement the CaseWorksEX system in 2006 to facilitate the discovery process for parties in the rate cases and related prudence and construction audits. (Tr. 361). This internet-based system allows the Staff and other parties a convenient method to review any case discovery. (Tr. 362-63). Approximately 200 people at the Companies are involved in answering the Staff's data requests, including four (4) persons in the Regulatory Department that are dedicated full-time to answering Staff's data requests and other requests for information. (Tr. 366-67) According to Ex No. 3, there were 3,015 Missouri data requests, informal data requests, and supplemental data requests in the last KCP&L and GMO rate cases. (Tr. 372-73).

As explained in the Companies' Initial Brief, four hundred-thirty-nine (439) data requests were received subsequent to the June 10th Order which required a Preliminary Report be filed by June 19th and a Final Report by December 31, 2009. (Tr. 373). Recently, another forty-five (45) data requests have been received since Ex. No. 3 was updated. (Tr. 374). In responding to over 3,015 data requests, the Companies provided the requested data using CDs, DVDs, and two hard copies of that same information to the Kansas City auditors. (Tr. 374-75)(Company Br. at 20).

In the rate case proceedings, Mr. Rush testified that approximately 4.5 million pages of data were provided to Staff in Missouri and Kansas. Nearly 4.0 million pages of information were provided to the Missouri Staff. (Tr. 376-78).

Mr. Rush testified that KCP&L personnel met with the Missouri Staff engineers, including Dave Elliott and Shawn Lange, on 32 separate occasions. (Tr. 378). These meetings

were typically held on the construction site, and addressed change orders and other construction activities. (Tr. 378-79). One hundred-thirty-seven (137) separate meetings were held with the Missouri Staff during the discovery process in the rate cases. Since the December 31 Reports were filed by Staff, the Staff has submitted approximately 40 additional data requests.[2] The Companies have continued to answer these data requests. (Tr. 380). Through these unprecedented efforts, the Companies have attempted to be open and transparent with the Commission, Staff, and other interested parties.

The Companies also believe that the Commission's decision to approve the Regulatory Plan in 2005[3], and the rate case orders in the 2006[4], 2007[5] and 2008 KCP&L and GMO rate cases[6] have been generally constructive and helpful, and have made it possible for the Companies to continue to finance and complete infrastructure investments and other programs approved in the Regulatory Plan approved in Case No. EO-2005-0329.

Staff's Lack of Transparency With The Commissioners

Unfortunately, the Companies do not believe that the Staff has been open and transparent with the Commissioners regarding the true status of the Iatan 1 prudence review and construction audit throughout this process. The Commissioners have been given the impression that the Staff was conducting a prudence review and construction audit prior to the April 15th Order.

[2] Since the hearings concluded, the total number of data requests from Staff has now increased to 130 since the December 31, 2009 Reports were filed.
[3] *Report And Order*, In the Matter of a Proposed Experimental Regulatory Plan of Kansas City Power & Light Company, Case No. EO-2005-0329 (July 28, 2005).
[4] *Report And Order*, In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Begin the Implementation of Its Regulatory Plan, (December 21, 2006).
[5] *Report And Order*, In the Matter of the Application of Kansas City Power and Light Company for Approval to Make Certain Changes in its Charges for Electric Service To Implement Its Regulatory Plan, (December 6, 2007).
[6] *Order Approving Non-Unanimous Stipulations and Agreements and Authorizing Tariff Filings,* in Case No. ER-2009-0089 and in Case No. ER-2009-0090 (issued June 10, 2009).

Unfortunately, there is no evidence in the record (or indications in the Staff's Initial Brief) to suggest that Staff ever intended to correct the record for the Commissioners if this on-the-record hearing had not occurred. Certainly, there is no apology or expression of regret in the Staff's Initial Brief for their failure to either complete the audit by December 31, 2009, as directed, or even correct the clear misperception regarding the status of the Staff audit (Tr. 518) that could have been gleaned from the Staff representations in the rate cases regarding the status of the Iatan 1 prudence review and construction audit.

As discussed below, the Staff is arguing that the Commission has no authority to grant the Companies any substantive or procedural relief in this proceeding. In effect, the Staff is arguing that the Commissioners have no authority to respond to the Staff's failure to complete its Iatan 1 prudence review and construction audit by December 31, 2009, as directed by the Commissioners themselves.

The Commission should reject the Staff's position in this case. Particularly with the Iatan 2 rate cases to be filed shortly, the stakes are too high to allow the Staff to act as if they are not accountable to any entity—particularly their own Commissioners.

II. THE COMMISSION HAS THE AUTHORITY TO GRANT RELIEF REQUESTED

In this proceeding, the Staff has argued:

> First, the Staff does not believe that the Commission can lawfully do in a non-contested proceeding what KCPL/GMO has requested that this Commission do even though the Commission has held an evidentiary hearing. (Staff Br. at 7)
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> * * *
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> The Staff does not believe that the Commission can lawfully grant to KCPL/GMO any substantive or procedural relief in this proceeding respecting their impending Iatan 2 rate cases. (Staff Br. at 9)

Staff's position is based upon the erroneous argument that the Commission has no authority to grant substantive or procedural relief in a "non-contested proceeding." (Staff Br. at 7-11) This Staff argument that no relief may be granted in a non-contested proceeding is not supported by statute, case law[7] or the previous practices of the Commission over many years in investigatory dockets such as Case No. EO-2010-0259.

The Commission has historically granted both substantive and procedural relief in virtually every "non-contested" case or investigatory docket in which it has entered a final order. For example, *in Re: Kansas City Power & Light Company's Experimental Regulatory Plan*, Case No. EO-2005-0329, the Commission approved a Stipulation And Agreement which included both substantive and procedural aspects of the Company's Regulatory Plan, including KCP&L's obligations related to its capital investments and other programs, single-issue ratemaking mechanisms, SO_2 emission allowances, pension expense, financing plans, AFUDC, current amortizations, additional amortizations to maintain financial ratios, in-service criteria for various plants, Wolf Creek depreciation reserves, resource plan monitoring, cost control processes, rate moratoriums, expected rate cases during the Regulatory Plan, timely infrastructure investments, and demand response, efficiency and affordability programs. The Commission has granted substantive and/or procedural relief in many EO- dockets involving KCP&L and GMO[8] as well as other public utilities.

[7] *See State ex rel. Public Counsel v. Public Service Commission*, 210 S.W.3d 344 (Mo.App. 2006)(telephone company granted rebalancing of rates); *State ex rel. Public Counsel v. Public Service Commission*, 259 S.W.3d 23 (Mo.App.2008)(intrastate access charge tariffs approved).

[8] *See e.g., Order Approving Application*, In the Matter of the Application of Kansas City Power & Light Company For Approval to Update the Investment Guidelines, Add an Investment Manager and Enter Into a New Agreement with the Existing Investment Manager for the Kansas City Power & Light Company Nuclear Decommissioning Trust Fund, Case No. EO-0439 (December 9, 2009); *Order Granting Financing Application*, In the Matter of the Application of Kansas City Power & Light Company For Approval to Issue Secured Debt to Two Bond Insurers Under Existing Municipal Bond Insurance Agreements, Case No. EO-2009-0274 (February 25, 2009); *Order*

It is not credible for Staff to suggest that the Commission can not grant substantive or procedural relief to parties in EO- dockets such as Case No. EO-2010-0259, or other "non-contested cases.

The only support that Staff cites for its position is Section 536.010(4) RSMo. Cum.Supp. 2009 which defines a "contested case," and the Commission's April 14, 2010 *Order of Clarification* issued in this proceeding which clarified its view of discovery devices that are available outside the context of a contested case. (Staff Br. at 7-8) Section 536.010(4) and the *Order of Clarification* do not address the substantive or procedural relief being requested by the Companies in this proceeding, and provide no support for the Staff's position in this case.

As explained in the Companies' Initial Brief, the Companies are requesting the following from the Commission in this proceeding:

1. An order clarifying the status of the Staff's audit. The Companies believe that the Staff should be precluded from proposing additional prudence disallowances in the next rate cases in addition to those eighteen (18) disallowances for KCP&L and twelve (12) disallowances for GMO that are already contained in its Staff's Report Regarding Construction Audit and

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Approving Stipulation and Agreement, In the Matter of Application of Kansas City Power & Light Company for Approval of the Accrual and Funding of Wolf Creek Generating Station Decommissioning Costs at Current Levels, Case No. EO-2009-0072 (April 29, 2009); *Report & Order*, In the Matter of the Application of Aquila, Inc., d/b/a Aquila Networks-MPS and Aquila Networks-L&P for Authority to Transfer Operational Control of Certain Transmission Assets to the Midwest Independent Transmission System Operator, Inc., Case No. EO-2008-0046 (October 9, 2008); *Order Approving Non-unanimous Stipulation and Agreement and Accepting Integrated Resource Plan*, In the Matter of the Resource Plan of Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks L&P pursuant to 4 CSR 240- Chapter 22 (February 26, 2008); *Order Approving Tariff Sheet*, In the Matter of the Tariff Filing of Kansas City Power & Light Regarding the Low-Income Affordable New Homes Tariff Sheet, EO-2007-0268 (February 6, 2007); *Order Approving Stipulation and Agreement and Accepting 2006 Integrated Resource Plan*, In the Matter of the Resource Plan of Kansas City Power & Light Company Pursuant to CSR 240-22 (April 12, 2007); *Order Approving Proposed Rate Schedule and Special Contract*, In the Matter of the Application of Kansas City Power & Light Company for Approval of A Rate Schedule Authorizing the Use of Special Contracts and Approval of a Specific Special Contract Between KCPL and An Existing Customer, Case No. EO-2006-0193 (March 16, 2006).

Prudence Review of Environmental Upgrades to Iatan 1 and Iatan Common Plant filed in Case Nos. ER-2009-0089 and ER-2009-0090 on December 31, 2009 ("December 31 Reports").

2. The Companies believe that the Commission should make the following findings based upon the evidence in the record:

a) The Companies have not engaged in any dilatory or unreasonable practices in responding to discovery during the construction audit and prudence review.

b) The Companies' cost control system adequately tracks the costs of the projects, and is consistent with accepted industry standards.

3. With regard to the upcoming Iatan 2 rate cases, the Staff should be required by the Commission to complete their prudence review of Iatan 2, and file their proposed prudence recommendations at the time that the Staff files its Direct Testimony in the rate cases involving the inclusion of Iatan 2 in rate base that are expected to be filed by KCP&L and GMO in the near future.

The Companies are seeking an order clarifying that the Staff's prudence review has ended with the filing of its December 31 Reports, consistent with the Commission's June 10th directive that the Staff should file its final construction audit and prudence review of the environmental upgrades at Iatan 1, including all additions necessary for these facilities to operate, no later than December 31, 2009. From KCP&L's and GMO's perspective, the Commission's June 10th Order clearly set a deadline that the Staff was required to complete and file the final construction audit and prudence review of the environmental upgrades at Iatan 1, no

later than December 31, 2009. There is no reason why the Commission can not clarify its own June 10th Order in this proceeding, and otherwise enforce it.

In its Initial Brief, Staff also asks the rhetorical question: "Is it the Commissioners and KCPL's understanding that if the Commission would grant KCPL the relief requested that the relief would function similarly to the mechanics of a rate moratorium?" (Staff Br. at 9)

The Companies fail to understand how this rhetorical question is remotely applicable to the relief being requested by the Companies. Apparently, Staff is suggesting that it should be allowed in the next KCP&L and GMO rate cases to address other parties' positions related to Iatan 1.

The Companies are not attempting to limit Staff's ability to address other parties' positions, but Staff should not be permitted to propose or support new prudence disallowances related to Iatan 1 which were not contained in the December 31, 2009 Reports. Otherwise, the Commission's June 10th Order directing that the Staff should complete and file the results of its prudence review and construction audit by December 31, 2009, has no meaning. Nor do the Companies believe that their request for relief affects in any way other parties' ability to present their own positions related to Iatan 1 or Iatan 2 issues. Certainly, the Commission's June 10th Order itself does not affect other parties' ability to take positions in future rate cases. It most certainly does not affect the Commission's ability to render decisions on issues raised by other parties to the future KCP&L and GMO rate cases.

Secondly, Staff itself has raised in its December 31, 2009 Reports the allegations of the Companies' discovery procedures and adequacy of its cost tracking mechanism as the reasons for its failure to complete its Iatan 1 prudence review and construction audit, as directed. The

Companies are requesting that the Commission make findings regarding these allegations, based upon the competent and substantial evidence in the record of this case.

Finally, with regard to the Iatan 2 prudence audit, the Companies are requesting that the Commission take a proactive step now to avoid the systemic problems that have become so apparent in this proceeding. Based upon the experiences of the recent rate cases, and the evidence that has been developed in this proceeding, the Companies believe it is important that the Staff be ordered to complete its prudence review of Iatan 2 by the time that the Staff files its Direct Testimony in the upcoming KCP&L and GMO rate cases. From the Companies' perspective, prudence issues should be ordered to be addressed in the main hearing of KCP&L's and GMO's next rate cases. Unless the Commission acts to correct the systemic problems that Commissioners Gunn and Jarrett have pointed out, they are likely to happen again in the upcoming Iatan 2 rate cases. (Tr. 512-523).

As discussed below, construction audits of major construction projects have typically been started before the rate cases are filed or as a part of the rate case in which the completed projects are included in rates. There is nothing unlawful or unreasonable about the Commission directing its own Staff to prepare for the upcoming rate cases by planning to file their prudence recommendations in a timely manner so that the evidence will be available to the Commissioners as they decide the level of prudent investment to be included in rates. Frankly, this has been the historic practice in almost every rate case involving a major power plant addition--prior to the last KCP&L and GMO rate cases.

For the reasons stated herein, the Commission should reject the position of Staff that the Commission has no authority to grant the relief being requested by the Companies in this proceeding.

III. STAFF'S ARGUMENTS REGARDING PRUDENCE ISSUES VERSUS RATEMAKING ISSUES ARE NOT HELPFUL TO THIS PROCEEDING.

In Section IV of Staff's Brief that discusses "prudence issues" versus "ratemaking issues/financial/construction issues," Staff seems to confirm that it does not make a distinction between a "prudence review" and a construction audit or financial audit. (Staff Br. at 11-23) Instead, Staff suggests that it is Staff's view that there are factors that cause the prudence determination not to be "discrete or immutable." (Staff Br. at 12) Apparently, Staff is unwilling to review the prudence of the decisions that were made by the Companies related to the construction of the Iatan 1 AQCS until every expenditure and invoice is examined. In contrast to the Staff's unorthodox view of prudence reviews, the Companies believe that the prudence of the construction decisions may be judged based upon the information that was available to the decision-makers at the time the decisions were made.

In contrast to the traditional prudence audit standards discussed by Dr. Nielsen, Staff does not acknowledge that prudence audits judge the prudence of decisions regarding a project, and those prudence determinations are made prospectively from what the decision-maker knew or reasonably should have known, at the time the decisions were being made. (Tr. 212-13). It is therefore unnecessary, under a traditional prudence review, to have all invoices or expenditures available for audit before the fundamental prudence of those decisions are made. (Tr. 215-16)

Staff also quotes the following portion of *State ex rel. GS Technologies Operating Co. v. Public Service Comm'n*, 116 S.W. 3d 680 (Mo. App. W.D. 2003) that discusses the prudence standard:

> *Associated Natural Gas* was a ratemaking case initiated by the utility, seeking to pass on costs to its customers. *Id*. at 523. In such cases, the utility receives the benefit of the presumption of prudence with regard to its costs until a serious doubt is created with regard to the prudence of an expenditure. *Id.* at 528. When a serious doubt arises, the burden then shifts to the utility to prove prudence of the expenditures in order to succeed on its request to pass these costs on to its customers. *Id*.

On this point, the Companies agree with Staff and the Missouri courts. As was explained in the last KCP&L and GMO rate cases, the opening statement in this proceeding (Tr. 22), and the Companies' Initial Brief at 6, there is a legal presumption of prudence with regard to the costs expended by the public utility. Until a "serious doubt" is raised by other parties, the public utility does not have any burden to prove the prudence of its decisions.[9]

[9] *In re Union Electric Company*, 27 Mo.P.S.C. (N.S.) 183, 193 (1985)("*Callaway I"); In re Kansas City Power & Light Company*, 28 Mo.P.S.C. 228, 279-82 (1986)("*Wolf Creek*"). The prudence standard adopted in the *Callaway I* and *Wolf Creek* cases has been recognized and approved by reviewing courts. *See State ex. rel. Associated Natural Gas Co. v. PSC*, 954 S.W.2d 520, 529 (Mo. App. W.D. 1999). The Commission interpreted the prudence standard in *In re Missouri-American Water Co., Report and Order*, Case No. WR-2000-281 (Mo. P.S.C., Aug. 31, 2000) as follows:

> In the context of a rate case, the parties challenging the conduct, decision, transaction or expenditures of a utility have the initial burden of showing inefficiency or improvidence, thereby defeating the presumption of prudence accorded the utility. The utility then has the burden of showing that the challenged items were prudent. Prudence is measured by the standard of reasonable care requiring due diligence, based on the circumstances that existed at the time the challenged item occurred, including what the utility management knew or should have known. In making this analysis, the Commission is mindful that the company has a lawful right to manage its own affairs and conduct its business in any way it may choose, provided that in so doing it does not injuriously affect the public.

The other cases cited by Staff in Section IV of the Staff Brief appear to have little, if any, relevance to the issues before the Commission in this proceeding, and therefore will not be discussed herein.

IV. STAFF'S DISCUSSION OF STAFF'S NON-OBJECTION TO DECEMBER 31, 2009 FILING DATE FOR STAFF REPORTS

Staff included Section V of its Brief (Staff Br. at 22-23) apparently to emphasize the point that when Mr. Schallenberg testified on June 8 in answer to Commissioner Davis that "Obviously, I won't object" if the Commission ordered Staff to complete its audit by December 31, 2009, what Mr. Schallenberg really meant was "I'm not in a position to object to a Commission directive." (Staff Br. at 23). Apparently, as the Director of the Utility Services Division which is supposed to be a one of the Divisions (and perhaps the only Division under the new policy) involved in of the prudence review and construction audit, Mr. Schallenberg did not believe that he could give his candid opinion to the Commissioners about whether the Staff could and would complete the Iatan 1 prudence review and construction audit by December 31, 2009. Instead, he merely left the Commissioners with the impression that it was okay with Staff to be directed to complete and file the results of the final Staff audit by December 31, 2009—"Obviously, I won't object."

Even after the Commission issued the June 10th Order, Staff did not feel compelled to correct the record if Mr. Schallenberg's statement had been misunderstood by the Commissioners. This appears to be another example of the lack of transparency and openness of the Staff toward the Commissioners, the Companies, and other interested parties regarding the real status of the Iatan 1 AQCS prudence review and construction audit. As discussed herein, Staff did not feel compelled at this juncture of the proceeding to inform the Commissioners that Staff (or more correctly, Mr. Schallenberg alone)(Tr. 96, 186) had barely

initiated its prudence review and construction audit of the Iatan 1 AQCS and common plant at the time Mr. Schallenberg testified on June 8 that "Obviously, I won't object." [10]

V. STAFF'S PRESENT ACTIVITY RESPECTING IATAN 1 AQCS AND IATAN COMMON PLANT

In Section VII of its Brief, Staff makes the following statement regarding its current intentions to continue its auditing activity of the Iatan 1 AQCS and common plant (Staff Br. at 26):

> The Staff is not presently engaged in a construction audit or prudence review of the time frame already addressed by the period covered in the Staff's Reports filed on December 31, 2009, which is the period through May 31, 2009, and it was not the Staff's intent to return to that time period to conduct further or new investigation and propose new, different or increased adjustments, barring the developments listed in the Staff's March 9, 2010 Reply. . .

This statement alone, unfortunately, does not give the Commissioners a full picture of the Staff's present intention with regard to its prudence review and construction audit of Iatan 1 AQCS and common plant. As explained in the Companies' Initial Brief, on page 5 of the December 31 Reports, the Staff stated: "At this time Staff is proposing that approximately $60 million of the cost overruns be examine (sic) in conjunction with Staff's audit of Iatan 2 overruns."[11] In addition, the December 31 Reports listed the following areas to be audited in the future: "Iatan 1 AQCS Post May 31, 2009 Expenditures, Iatan 2 May 31, 2010 Expenditures,

[10] Section VI of Staff Brief entitled "Notice In Staff's December 31, 2010 (sic) Reports That Staff's December 31, 2010 (sic) Reports Are Subject To Change" does not discuss anything of substance except to clearly indicate that Staff's December 31 Reports are not the final reports and are subject to change. It is unnecessary for the Companies' to respond to this section of the Staff Brief. However, this portion of the Staff Brief again clearly indicates that Staff unapologetically has chosen to ignore the Commission's directive to complete its prudence review and construction audit by December 31, 2009.

[11] December 31 Reports, p. 5.

Iatan Project Common Plant not needed to operate Iatan 1 and in service by rate case cutoff date".[12]

The December 31 Reports also stated that the future audit report addressing other items would not be filed until the "Staff Direct Filing Date in KCPL's Rate Case following the inclusion of Iatan 2 in rate base." (E*mphasis added*). These items included: "Iatan 2 Post May 31, 2009 Expenditures and Iatan Project Common Plant not needed to operate Iatan 1 and in service after previous rate case cutoff date."[13]

Next, Staff posits in its Brief the following question:

> If KCPL/GMO prevail and the Commission orders the relief that KCPL/GMO are requesting, there is the question of whether the Staff is prohibited from filing testimony in response to an Iatan 1 AQCS and Iatan 1 common plant adjustment that another party is proposing?

As explained earlier, it is not the intention of the Companies to limit the Staff from participating in the next KCP&L and GMO rate cases. However, the prudence issues supported by Staff should be those issues already listed in the December 31 Reports.

VI. STAFF'S ARGUMENTS REGARDING THE VOIDING OF STIPULATIONS SHOULD BE REJECTED.

Section VIII of Staff's Brief is entitled "Potential Voiding of the Revenue Requirement/Global Stipulation And Agreements in Case Nos. ER-2009-0089 and 2009-0090." Staff's Brief is the first time Staff has ever announced in any pleadings its novel interpretation of the Commission's audit orders (June 10, 2009) and the first time Staff has suggested that any actions of the Commission or the Companies impact the settlement agreements in the last rate

[12] *Id.* at 3.
[13] *Id*.

cases, which were also approved by the Commission on June 10, 2009. Staff's apparent argument is that either 1) Staff's signing of the settlement agreements took away the Commission's authority to direct Staff or 2) the Commission's approval of the settlement agreements limited the Commission's authority to control its own Staff in the future.

Staff's position is apparently that the two day hearing held in this matter was simply an opportunity to "access the Commission" and that no relief is appropriate or available. (Staff Br. at 2) Staff apparently forgets that the Companies did not request an on-the-record proceeding concerning the failure to conduct an audit. The Companies filed a response to the December 31 Reports and objected to proposals made by Staff in their audit reports. The Commission, on its own motion, then ordered an on-the-record proceeding. In response to that order, KCP&L and GMO explained that it would take approximately two days to address all of the issues the Commission's order encompassed. The Commission apparently agreed, and set aside two days for the hearing. Staff's position appears to be that those two (long) days were apparently nothing more than an academic exercise in presentation of testimony because this Commission can do nothing to address the issues that have been raised.

The Stipulation and Settlement Agreements approved on June 10 present no impediment to this Commission directing its own Staff. A simple reading of the settlement agreements reveals that Staff's argument is an after-the-fact interpretation in an attempt to avoid any consequences for Staff's failure to conduct a prudence audit.

A. Staff's Selectively Cites prior Orders and Agreements.

Staff focuses on sections of the Stipulation and Settlement Agreements that address Staff's ability to present prudence testimony and to continue audits. (*See* Paragraphs 5, 25 and 26 in the KCP&L Agreement). The Companies do not dispute that those Agreements are binding agreements between the parties who signed them. But those Agreements did not remove this Commission's authority. In fact, all of the parties – including the Staff – agreed that nothing in the Agreements limits the Commission's authority.

Paragraph 16 of the KCP&L agreement states:

> This Agreement does not constitute a contract with the Commission. Acceptance of this Agreement by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forgo the use of any discovery, investigative or other power which the Commission presently has. Thus, nothing in this Agreement is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligations.

In spite of the plain language of a paragraph to which the Staff agreed, the Staff asserts that an order of the Commission at the end of this proceeding "will void the revenue requirement/global agreement Stipulation." (Staff Br. at 30). The Staff also asserts that KCP&L has already "violated paragraph 26" of its agreement apparently by suggesting possible orders for this Commission at the conclusion of a proceeding the Commission ordered on its own motion. *Id.*

Staff's position is preposterous. Because the Commission was not a party to the agreement, it can do nothing to void the agreement. In its Brief, Staff points to a provision of the agreement, Paragraph 25 of the KCPL Agreement, voiding the agreement if it is not approved by the Commission. But later in Staff's Brief, Staff acknowledges that "the Commission's June 10,

2009 Order . . . approves the [Agreements] . . .without modification or amendment." (Staff Br. at 33). Since the Commission approved the agreement without modification, the agreement was binding on the parties – including the Staff.[14]

Even if the Commission were a party to and bound by the agreement, no order limiting Staff's auditing activity would violate that agreement. No one has suggested that parties to the proceeding should not be allowed to challenge the prudence of any Iatan I construction cost. (*See* paragraph 5 of the KCP&L Agreement). Staff was ordered by the Commission to complete a prudence audit by December 31. Staff told the Commission it could do so and has never asked for any extension. That audit is Staff's opportunity to challenge the prudence of any Iatan I construction costs and Staff will be allowed to present it in the next KCP&L and GMO rate cases. Requiring Staff to complete its review and submit its position by a certain date does not violate the Agreements any more than requiring parties to submit testimony by a certain date (and be limited to that testimony) would violate the Agreements. (*See e.g.*, 4 CSR 240-2.130(8) which does not allow supplementing of direct testimony and 4 CSR 240-2.110(4) allowing the presiding officer to limit testimony). This Commission has the authority to control the procedure by which parties present testimony. What the Commission is doing in this proceeding is similar to a Court setting a deadline for expert testimony and not allowing any further testimony outside of a completed expert report submitted within a certain deadline. The Commission has even more authority in this situation, because the Commission is controlling its own staff.

[14] Although Staff hints at another issue on page 33-34 of its Brief, Staff has apparently abandoned the suggestion made by Mr. Hyneman during the proceeding, that the Commission's June 10th Order which ordered the completion of an audit by December 31, 2009, and which was not objected to or questioned by any signatory party, including Staff, somehow voided the Agreements.

Nor would any order by this Commission violate the Agreement provisions stating the parties may continue auditing of Iatan I. (*See* paragraph 5 of KCPL agreement). The parties have been allowed to continue auditing. The Commission (without objection from any party to the last rate cases) ordered the Staff to complete its audit by December 31, 2009. Again, the Commission has the authority to control the procedures by which testimony is presented and certainly has the authority to set deadlines for its own Staff. As agreed to by Mr. Schallenberg in response to questioning from the Regulatory Law Judge, the Staff's authority derives solely from the Commission. (Tr. at 621-22) The Commission has the authority to order its employees to perform any act the Commission is authorized to perform. Section 386.240, RSMo. That power to authorize also includes the authority to limit Staff's performance of an act. The Agreements specifically retained the Commission's authority to make such orders as it sees fit.

B. The Companies have Done nothing That Violates the Agreements

The Staff asserts that "KCPL has violated paragraph 26 . . . and GMO has violated paragraph 22" of the Agreements. (Staff Br. at 30) Although Staff does not specifically explain what actions of the Companies the Staff claims violates the agreements, Staff is simply incorrect. Staff apparently believes that the Companies have violated provisions requiring the Parties to defend the Agreements. The Companies have and will continue to defend the agreements, including the provision that preserves this Commission's authority to exercise its own authority and enter its own orders.

As discussed above, the Companies submitted a response to Staff's December 31 Reports and objected to any activity that exceeded this Commission's order. In response to that objection, this Commission ordered Staff to file its own pleading. After the two sides had

submitted responsive pleadings, the Commission ordered an on-the-record proceeding. The Companies then submitted pleadings that suggested a course of action for the Commission in conducting that proceeding. Although the Staff apparently believes the proceeding cannot and should not result in any action by the Commission, the Companies disagree. The Companies urge this Commission to exercise authority over its Staff and continue to enforce reasonable limitations it placed on Staff. Nothing about the Companies' actions is inconsistent with the Agreements, although one could argue that Staff's attempt to limit this Commission's authority is a violation of the Agreement. The Companies have met their obligations and will continue to do so.

C. Staff's Case Law is Unhelpful

Staff spends several pages of its Brief discussing various cases about settlements that involved the Commission. (Staff Br. at 36-40). Staff does not explain exactly how each of these cases is relevant to this particular proceeding and the relevancy is not apparent. These cases involve the authority to settle cases while they are on appeal to the Circuit Courts and the Commission's authority to set rates using a settlement document. None of the cases discussed by Staff discuss the Commission's authority to control its Staff, or limit the activities and testimony of any party to a proceeding before this Commission.

VII. THE STAFF WORKS FOR THE COMMISSIONERS –NOT OTHER PARTIES

In Section X of its Brief, Staff tries to turn the tables on the Companies' argument that they had relied upon the Commission's June 10th Order and presumed that Staff would be required to comply with the Commission's clear and unequivocal directive to complete the Iatan 1 AQCS and common plant prudence review and construction audit by December 31, 2009.

Staff tries to invoke standing for other parties to complain that Staff can not be directed by the Commissioners to complete and file the final prudence review and construction audit by December 31, 2009 because "[s]ome or all of the other nonutility signatories may have entered into those revenue requirement/global agreement Stipulation And Agreements relying on the Staff being permitted to continue to perform its prudence reviews/construction audits of Iatan 1 and Iatan common plant into KCPL's and GMO's filing of their Iatan 2 rate cases." (Staff Br. at 47) Staff has apparently lost sight of the fact that they don't work for other parties, but they work for the Commission, and the Commissioners may direct its own Staff to file its audit reports by a date certain.

VIII. FINANCIAL CONSEQUENCES

In Section XII of its Brief, the Staff posits the following questions:

> What will Wall Street's and GPE's/KCPL's/GMO's investors' reaction be if the Commission takes action that voids or brings into question the continuing effect of the April 24, 2009 Case No. ER-2009-0089 revenue requirement/global agreement Stipulation And Agreement and the May 22, 2009 Case No. ER-2009-0090 revenue requirement/global agreement Stipulation And Agreement?
>
> What will Wall Street's and GPE's/KCPL's/GMO's investors' reaction be if the Commission takes action that voids or brings into question the continuing effect of the Case No. EO-2005-0329 KCPL Experimental Regulatory Plan Stipulation And Agreement?

As explained in the Companies' Initial Brief, and Section VI of this Reply Brief, the Commission can not "void" the various Stipulations and Agreements by directing its own Staff to complete its prudence review and construction audit (as they appear to have agreed to do) by December 31, 2009. This argument is clearly a red herring argument thrown against the wall by Staff at the eleventh hour to see if it could stick. The Commission should reject these Staff claims as self-serving arguments, and an after-the-fact interpretation designed to avoid any consequences for Staff's failure to complete a prudence audit.

IX. DISCOVERY ISSUES

In Section XII of its Brief, the Staff virtually abandons its arguments related to discovery issues, and its allegations contained in the December 31, 2009 Reports that the Companies' discovery practices have somehow prohibited Staff from completing its prudence review and construction audit of Iatan 1 AQCS and common plant, with one possible exception that the Commission has already ruled upon.

Staff raises again the matter of unredacted invoices from Schiff Hardin which were reviewed by Judge Stearley. Judge Stearley suggested in a few instances that more information should be provided by KCP&L, and KCP&L complied. (Tr. 31, 63, 134-35). In fact, Judge Stearley largely upheld the positions taken by KCP&L regarding attorney-client privileges and other objections, including KCP&L position that it should not be required to provide invoices that were inadvertently provided to the KCC Staff which were returned upon the discovery of the mistake.[15]

After raising the redacted Schiff Hardin invoice issue that has already been resolved, Staff next goes back twenty-five (25) years to the Wolf Creek case for examples of discovery issues. Clearly, events from 25 years ago could not be used to support an allegation that the Companies' actions have impeded the Staff's ability to comply with the Commission's directive to complete an audit of the Iatan 1 AQCS and common plant. The Iatan 1 AQCS was not even on the drawing board 25 years ago when the Wolf Creek discovery issues were reviewed.

Similarly, Staff briefly discusses a discovery dispute in the Aquila Merger proceeding in which the Commission limited the Staff's unfettered effort to inquire into the reforecast of the cost and schedule issues related to Iatan 1 and Iatan 2 in the context of the merger proceeding. Again, it is difficult to understand how Staff can use this example as support for any allegation

[15] *See Order Regarding Staff Motion to Compel*, Case No. ER-2008-0089 (issued on December 9, 2010)(Tr. 63).

that events from 2007 could possibly have impeded the completion of their Iatan 1 AQCS and common plant prudence review and construction audit since this audit did not commence until after the Commission issued its April 15th, 2009 Order.

X. QUESTIONS FROM JUDGE STEARLEY

In Section XIII of the Staff Brief, Staff discusses questions from Judge Stearley at the hearing related to the source of Staff's authority to take actions before the Commission. Staff does not dispute Mr. Schallenberg's answers that the Staff derives its sole authority for any action directly from the Commission itself. (Tr. 621-22) This is a critically important point as the Commission considers Staff's arguments that it has no authority to grant any procedural or substantive relief in this proceeding, including holding the Staff accountable for their failure to follow the June 10th Order to complete the Iatan 1 prudence review and construction audit by December 31, 2009. Staff's position, as discussed above, is simply designed to eviscerate the ability of the Commissioners to deal with the systemic problems that have become apparent in this proceeding.

Staff's discussion of the recent separation of the litigation staff from the General Counsel's staff has no apparent relevance to the issues in this proceeding, and therefore will not be addressed herein.

XI. THE PRUDENCE REVIEW AND CONSTRUCTION AUDIT OF THE WOLF CREEK NUCLEAR UNIT WAS CONSIDERED IN THE RATE CASE IN WHICH WOLF CREEK WAS INCLUDED IN RATES.

In Section XIV of the Staff Brief, Staff discusses the KCP&L rate case involving the Wolf Creek nuclear power plant and the Commission's consideration of the level of prudent investment to be included in rates. *See Re Kansas City Power & Light Co*., Case Nos. EO-85-185 and EO-85-224, *Report And Order*, 28 Mo.P.S.C.(N.S.) 228 (1986)("Wolf Creek case"). The Wolf Creek rate case is an example of how the Commission has historically reviewed

the prudence of a public utility's decisions related to a plant addition in the context of the main hearings in the rate case in which the public utility sought to have the new plant included in rates.

As Staff counsel pointed out in the hearings (Tr. 337), in the Wolf Creek case, the Staff began a construction audit of the plant on October 8, 1981, several years before the Company filed its rate case to have the plant included in rates. *See Re: Construction Audit of Kansas City Power and Light Company's Wolf Creek Nuclear Generating Station* , Case No. EO-82-88.[16] The Staff conducted their prudence audits and made their recommendations to the Commission within the context of the rate case in which the Wolf Creek plant was included in rates. Similar approaches were taken in the Callaway I and Grand Gulf nuclear plant rate cases.[17] As noted in the Companies' Initial Brief, in more recent rate cases involving AmerenUE's Peno Creek plant[18], Empire's rate cases involving the State Line Combined Cycle Plant[19] and the Asbury Plant SCR project[20], and Aquila's rate case involving the South Harper plant[21], the Commission Staff conducted its investigation and made its recommendations to the

[16] In fact, Staff's Motion For An Order Directing A Construction Audit in Case No. EO-82-88 which Staff counsel distributed to the Commission (Tr. 357, 329), states that: "that Staff has been investigating and monitoring the construction activities of KCPL Wolf Creek for over four (4) years. Further, that on the 18th day of March, 1977, in Case No. EO-77-163 In the matter of the Staff's project management review of KCPL's Wolf Creek Plant, the Commission ordered the Secretary of the Commission to file the completed report of the project management review prepared by the Staff to be made a part of the public records held by the Commission." (Motion For An Order Directing A Construction Audit, Case No. EO-82-88, pp. 1-2) In Exhibit "A" to the Staff Motion, the Staff attached an Order Directing A Construction Audit in Case No. EO-77-163 which stated: "Since 1979, the Commission Staff Generating Facilities Department has conducted an ongoing investigation of construction operations at the KCPL Wolf Creek Generating Station." (Exhibit "A", p. 1)

[17] *See Callaway Ik*, *supra*; *In re Arkansas Power & Light Company*, 28 Mo.P.S.C. 435, 465-69 (May 4, 1986).

[18] *See Re Union Electric Company d/b/a AmerenUE*, 257 P.U.R.4th 259, 2007 WL 1597782, *Report & Order*, Case No. ER-2007-0002, pp. 67-70 (Mo.P.S.C.)(May 22, 2007)

[19] *See Re Empire District Electric Company*, 2001 WL 1861535 (Mo.P.S.C.), 10 Mo.P.S.C.3d 463, 474-75 *Report & Order*, Case No. ER-2001-299 (September 20, 2001)(State line combined cycle power plant issue was settled and capital costs were included in rate base.)

[20] *See Re Empire District Electric Company*, 267 P.U.R.4th 396, 2008 WL 3833756 (Mo.P.S.C.), *Report & Order*, Case No. ER-2008-0093, pp. 61-64 (July 30, 2008).

[21] *In re Aquila, Inc., Order Approving Stipulation and Agreement*, 2006 WL 861195 (Mo.P.S.C.), Case No. ER-2005-0436 (February 23, 2006)(South Harper issue settled without inclusion in rate base).

Commission in the context of those rate cases. And in those cases, the Commission made its determinations of prudence and determined the appropriate amount of investment that should be included in rate base within the context of those rate cases.

In the Wolf Creek rate case, the Staff filed its prudence and construction audit results in the context of the rate case. In Phase IV of the hearings, Wolf Creek Nuclear Unit and related issues were considered by the Commission for several weeks. *See Report & Order* in the Wolf Creek Rate Case, 28 Mo.P.S.C.(N.S.) 228, 279-369 (April 23, 1986). In fact, the Commission's decision discusses the Wolf Creek issues for nearly 100 pages and specifically addresses, in part, the following prudence and construction issues: (1) Legal standard to be employed in a prudence review; (2) Overall Project Management; (3) Owner/Management of the Project; (4) Industry Comparisons and Regulatory Change; (5) Direct Labor Man-hours; (6) Concrete issues; (7) Structural Steel issues; (8) Building Finishes; (9) Surfaces Finishes; (10) Mechanical Equipment; (11) Instrumentation; (12) Hangers and Piping; (13) Electrical issues; (14) Earthwork issues; (15) Site Work; (16) Insulation; (17) Night Shift Productivity and Contingency issues; (18) Adjustment to Direct Labor Man-hours; (19) Indirect Manual Labor and Materials issues; (20) Indirect Nonmanual Labor issues; (20) Builder's Risk Insurance; (21) KG&E Salaries; (22) Safety Meetings adjustment; (23) Overtime; (24) Back Charges; (25) Instrumentation—Westinghouse; (26) Insulation Subcontract; (27) KG&E Administrative and General Expenses; (28) AWS Welds; (29) Daniel Fringe Benefits; (30) Start-up and Preoperational Costs; (31) Daniel Fee; (36) Project Cost Reconciliation; (37) Public Counsel

Prudence Adjustment; (38) Economic Excess Capacity; (39) Traditional Excess Capacity issues; and (40) 5.5 Percent Unsold Share of Wolf Creek. *Id*.[22]

Of relevance to this proceeding, there does not appear to be any discussion of mileage charges, or officer expense accounts in any of the hundreds of pages of the Wolf Creek decision (or Callaway I decision) of the Commission. A cursory review of the Wolf Creek and Callaway I decisions, however, clearly shows that Staff in the mid-1980s knew the purpose of a prudence review and construction audit, and prepared to render their opinion on prudence issues in the context of the main rate case hearings.

As discussed in the Companies' Initial Brief, the Commission should take a proactive approach in this proceeding to ensure that the Staff files its prudence and construction audit recommendations for Iatan 2 at the time that the Staff files its Direct Testimony in the next KCP&L and GMO rate cases. Otherwise, it will be difficult for the Commission to consider all relevant factors in the context of the evidentiary hearings in these upcoming rate cases, as required by Missouri law.[23]

Since the Staff has said nothing in the Staff's Initial Brief to dispel the Companies' concerns that regulatory history may repeat itself, the Companies must respectfully renew their request that the Staff be ordered to complete its prudence review of Iatan 2 by the time that the Staff files its Direct Testimony in the upcoming KCP&L and GMO rate cases. Prudence issues should be ordered to be addressed in the main hearing of KCP&L and GMO's next rate case, as has been the historic practice of the Commission.

[22] Similar prudence and construction issues had previously been addressed by the Commission following the prudence review and construction audit of the Callaway Nuclear Unit in Union Electric Company's Callaway I Rate Case. *Re Union Electric Company,* Case Nos. EO-85-17and ER-85-160, 27 Mo.P.S.C. (N.S.) 183, 189-273 (March 29, 1985).

[23] *State ex rel. UCCM v. Public Service Commission*, 585 S.W.2d 41, 49-50 (Mo.banc 1979).

Unless the Commission acts in this proceeding to ensure that Staff does not postpone the conclusion of its prudence review and construction audit of Iatan 2 beyond the next KCP&L and GMO rate cases, the problems that developed in the recent Iatan 1 rate cases are likely to reappear. (Tr. 512-523).

XII. CONCLUSION

Having fully addressed the Staff's arguments in its Initial Brief, the Companies respectfully renew their request that the Commission adopt the recommendations of the Companies contained in their Initial Brief and herein. In particular, the Companies request that the Commission issue an order in this proceeding:

(1) clarifying the status of the Staff's audit and confirm that the Staff's prudence review of Iatan 1 and the common plant needed to operate Iatan 1 ended with the filing of the Staff's Reports on December 31, 2009;

(2) precluding Staff from proposing additional prudence disallowances in the next rate cases in addition to those eighteen (18) disallowances for KCP&L and twelve (12) disallowances for GMO that are already contained in its *Staff's Report Regarding Construction Audit and Prudence Review of Environmental Upgrades to Iatan 1 and Iatan Common Plant* filed in Case Nos. ER-2009-0089 and ER-2009-0090 on December 31, 2009 ("December 31, 2009 Reports");

(3) issue an order that finds:

(a) The Companies have not engaged in any dilatory or unreasonable practices in responding to discovery during the construction audit and prudence review.

(b) The Companies' cost control system adequately tracks the costs of the projects, and is consistent with accepted industry standards.

(4) And perhaps most importantly, the Staff should be required by the Commission to complete their prudence review of Iatan 2, and file their proposed recommendations at the time that the Staff files its Direct Testimony in the rate cases involving the inclusion of Iatan 2 in rate base that are expected to be filed by KCP&L and GMO in the near future.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served either by electronic mail or by first class mail, postage prepaid, on this 4th day of June 2010 to counsel for all parties of record.

/s/ James M. Fischer
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