BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Continue the Implementation of Its Regulatory Plan	)))))	Case No. ER-2010-0355
In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges for Electric Service	))))	Case No. ER-2010-0356

APPLICATION FOR REHEARING AND REQUEST FOR CLARIFICATION OF KANSAS CITY POWER & LIGHT COMPANY AND KCP&L GREATER MISSOURI OPERATIONS COMPANY REGARDING REPORT AND ORDER CONCERNING ADVANCED COAL TAX CREDITS

Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO") (collectively, "Companies") hereby apply for rehearing of the Commission's Report and Order Directing KCP&L and GMO to Apply to the IRS to Revise the Memorandum of Understanding Regarding the Advanced Coal Tax Credits for Iatan 2 issued March 16, 2011, pursuant to Section 386.500, Mo. Rev. Stat. (2000) and 4 CSR 240-2.160. KCP&L and GMO also seek clarification of the Commission's Order and respond to Staff's March 18, 2011 Motion to Clarify.

I. Introduction.

1. Since the Order, counsel for KCP&L and GMO has contacted the IRS by phone to understand the process regarding modification of the Memorandum of Understanding ("MOU"). KCP&L and GMO are on track to apply for an amendment of the MOU by April 5, 2011.

2. While KCP&L and GMO are pursuing an amendment of the MOU as ordered by the Commission, it seeks rehearing of the issues below.

II. Application for Rehearing.

3. The Commission recognized on p. 10 of its Order that a normalization violation would eliminate the value of tax credits for both KCP&L and GMO, causing harm to both of the Companies and their customers. This holding is consistent with the testimony of KCP&L witness Melissa Hardesty and Staff witness Paul R. Harrison who agreed that normalization violations can result in the loss of tax credits and trigger repayments to the IRS if a state utility commission attempts to reallocate tax credits among regulated public utilities. Tr. 3936-37 (Hardesty), 3961-67 (Harrison)

4. However, the Commission's Order will have that very effect because Ordered Paragraph 3 is itself a normalization violation. Based on paragraphs 25 through 28 of the Findings of Fact of the Commission's Order, it is clear that the Commission understands that any attempt by the Commission on its own to reallocate the credits directly or indirectly to accomplish a reallocation of credits to GMO may constitute a normalization violation. By imputing a credit to GMO if the IRS does not reallocate the credit, the Commission has attempted its own reallocation. Therefore, the Companies believe that any such action would clearly be a violation of the normalization rules.

5. Under Order Paragraph 3, GMO would purportedly receive reallocated tax credits from the Commission, not the IRS. GMO would then be subject to a normalization violation. Ms. Hardesty testified that a normalization violation would affect not only the Section 48A advanced coal credits, but also all other investment tax credits on the books of GMO. GMO

would lose all of its existing tax credits, which amount to $3,963,573 for its MPS division and $287,722 for its L&P Division, for a total of $4,251,295. See Hardesty GMO Rebuttal at 10-11.

6. If the Commission also intended for the Ordered Paragraph 3 to impact the amount of credits available to KCP&L, then KCP&L may also have a normalization violation. Specifically, this may require KCP&L to repay the IRS $52,294,411, which consists of (a) $29,151,153 in advanced coal credits that have been claimed and utilized by the Company, as well as (b) $23,143,258 in other claimed investment tax credits. In addition, KCP&L would lose the ability to offset future tax liabilities with $77,957,534 of advanced coal credits that have not yet been utilized. The total penalty to KCP&L for such a normalization violation would be $130,251,945. See Hardesty KCP&L Rebuttal at 10-11. Id. at 11; Tr. 3936-37 (Hardesty).

7. Should the efforts to amend the MOU fail, the Commission should not penalize KCP&L and GMO as outlined above by imputing the credits.

8. A normalization violation would also impact both GMO and KCP&L's ability to take advantage of future investment tax credits. Once a company has a normalization violation, Treasury Regulation Section 1.46-6(f)(4) indicates that investment tax credits are disallowed for any property placed in service by a taxpayer from the date a final inconsistent decision with the normalization requirements is put into effect until such date a subsequent decision consistent with the normalization rules is put into effect. Therefore, if a normalization violation occurs and coal credits are included as a reduction of cost of service over the life of Iatan 2 at GMO, the Companies would not be able to take advantage of any other investment tax credits that may be available, including but not limited to investment tax credits on renewable energy properties until the normalization violation is corrected by the Commission.

9. Although both KCP&L and GMO understand that the Commission intended to assist them in their negotiations with the IRS for the amendment of the MOU, the Companies believe that Ordered Paragraph 3 is not helpful and could be counter-productive to those negotiations. Further, Ordered Paragraph 3 is unnecessary at this time because it is conditioned upon an event that has not yet occurred, i.e., a denial by the IRS of the application to amend the MOU. The deletion of Ordered Paragraph 3 does not limit the Commission's authority to issue subsequent orders based on future events.

10. The portion of the Commission's Order that attempts to impute tax credits to GMO as explained above is unjust, unreasonable, arbitrary, capricious, is an abuse of discretion, is unsupported by competent and substantial evidence upon the whole record, and is unconstitutional, all in material matters of fact and law.

III. Request for Clarification of Commission Order.

11. Although the Companies urge the Commission in the strongest possible terms to grant the relief sought in Paragraphs 1 and 2 of the prayer below, if that relief is not granted the Companies seek clarification of ordered paragraph 3. The Companies' understanding of this paragraph is that if KCP&L is unsuccessful in getting a modification of the MOU then the Commission intends for a ratable portion of the $26,562,500 calculated on the basis of the book life of Iatan 2 assets to be included as a reduction of cost of service in a future GMO rate proceeding. The Companies request that the Commission confirm whether this understanding is correct. KCP&L also requests guidance from the Commission as to whether its credits will be reduced by a like amount.

IV. Response to Staff's Motion.

12. Staff believes that GMO's share of the tax credits should be $26,562,500 instead of $26,500,000 as indicated in the Commission's Order. KCP&L and GMO agree with Staff's figure.

13. Staff wants the Commission to clarify if Staff is to be involved in the IRS application process and if KCP&L and GMO must provide their IRS application to Staff for review. KCP&L and GMO have no objection to Staff being involved in the process. The Companies point out that there is no formal application to be submitted to the IRS, but the Companies will provide Staff with advance copies of all letters to the IRS concerning the modification of the MOU.

14. Finally, Staff asks for clarification as to whether the Commission will impute transfer of GMO's share of the coal tax credits in the current rate cases (0355 and 0356) if the IRS has not yet ruled on KCP&L's application to amend the MOU when the Commission writes its Order. The Companies respectfully request that the Commission not make such an imputation before the IRS makes a decision as they believe it would constitute a normalization violation. The Commission stated at p. 10 of its Order that the Commission will not impute a tax credit to GMO unless the MOU cannot be amended. Should the IRS agree to the amendment, then this issue will be resolved going forward and GMO will get the benefits of the tax credits.

15. However, if the Commission imputes the tax credits to GMO before the IRS makes a decision, a normalization violation would occur and both GMO and KCP&L rate payers and shareholders would suffer severe consequences. Early imputation will prevent KCP&L and GMO from resolving this issue with the IRS to all parties' benefit. KCP&L and GMO request that the Commission give the Companies an opportunity to address this situation with the IRS.

WHEREFORE, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company respectfully request that the Commission take the following action:

1. Substitute the word “allocate” for the word “impute” in Finding of Fact 24 and in the fourth line of the first paragraph on page 11;

2. Remove ordered paragraph 3 from the Report and Order; and

3. Direct KCP&L and GMO to advise the Commission of what action is taken with regard to their request that the Internal Revenue Service modify and amend the Memorandum of Understanding between the IRS and KCP&L entered into in 2011.

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing was served upon counsel of record on this 25th day of March, 2011.

/s/ Karl Zobrist
Karl Zobrist