BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

INITIAL POST-HEARING BRIEF OF KANSAS CITY POWER & LIGHT COMPANY

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Kansas City Power & Light Company ("KCP&L" or the "Company") submits this Initial Post-Hearing Brief ("Brief") in accord with the Missouri Public Service Commission's ("Commission" or "PSC") Order Setting Procedural Schedule issued December 12, 2014.

I. INTRODUCTION

The parties have worked diligently to resolve many issues in this case, as reflected by the three non-unanimous stipulation and agreements filed on June 26, 2015 and July 1, 2015, approved by the Commission on July 17, 2015. However, the issues remaining for decision by the Commission will have a large impact upon the Company and its customers. In particular, the Commission's findings regarding cost of capital, the fuel adjustment clause ("FAC"), and the several tracker proposals will greatly affect the financial integrity of KCP&L, its ability to earn its authorized return on equity ("ROE") and how quickly it will need to file its next general rate case.

II. COST OF CAPITAL

A. Return on Common Equity: What Return on Common Equity Should be Used for Determining Rate of Return?

1. As the effects of the Great Recession abate, and major economic trends show substantial improvement over the last time the Commission set KCP&L's rate of return, the Commission must determine what ROE will permit the Company to continue to attract investors while reflecting the concerns and interests of customers. The Commission must strike the appropriate balance among the recommendations presented to it by four experts in the context of economic data and trends. Its decision must be at a point within the zone of reasonableness that reflects the risks faced by the Company. Such a point should also be consistent with ROEs recently determined by other regulatory utility commissions for comparable companies.

2. In KCP&L's last rate case the Commission set the Company's ROE at 9.7%.[1] This figure was 10 basis points below the low-end of KCP&L's recommendation of 9.8%, which was at the top of the range suggested by the Federal Executive Agencies. It was 20 basis points above the high-end of OPC's recommendation (9.5%), and 70 basis points above the top of Staff's range (9.0%).[2]

3. In the pending case, KCP&L's expert Robert Hevert recommends an ROE of 10.3%, based on a range of 10.0-10.6%. See Ex. 116, Hevert Rebuttal at 95. The average of the recommendations at the top of the range of the three opposing witnesses is 9.5%.[3] When averaged with the low range of KCP&L's recommendation (10%), the result is 9.75%.

4. This is consistent with the ROE of 9.75% that was recently authorized by the West Virginia Commission for Appalachian Power Co. in a decision that Staff cites favorably on other issues. Tr. 1725 (Lyons); Ex. 223, Sched. 3 (Lyons Surrebuttal). See Commission Order at 21, In re Appalachian Power Co., No. 14-1152-E-42T (W. Va. P.S.C., May 26, 2015).[4]

5. This is very close to the average of ROEs awarded to date in the second quarter of 2015 (9.83%) and the average of all ROEs authorized during 2014 through the second quarter of this year to date (9.88%). See Ex. 139 (summary of authorized ROEs).

6. Given the clear evidence of growth in the economy, rising interest rates, and lower unemployment, it is clear that the ROE estimates at the low end of the recommendations

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[1] See Report and Order at 19, In re Kansas City Power & Light Co., Case No. ER-2012-0174 (Jan. 9, 2013).

[2] Id.

[3] This is an average of Commission Staff ("Staff") (9.5%), Midwest Energy Consumers' Group ("MECG") and Missouri Industrial Energy Consumers ("MIEC") ("Industrials") (9.4%), and the U.S. Department of Energy ("DOE") (9.59%).

[4] "… the Commission determines a ROE of 9.75 percent is reasonable, falls within the range of reasonable ROEs presented by the parties, fairly balances the interests of the Companies and their customers, and meets the standards set forth by the United States Supreme Court and the Supreme Court of Appeals of West Virginia."

by Staff, the Industrials, and the DOE demonstrate the flaws in both their analyses and their conclusions.

7. Staff proposes low-end recommendations of 6.28% to 8.28%, far outside any zone of reasonableness and unlawfully confiscatory. See Ex. 200, Staff Report at 53 (8.18-8.28%), 55 (6.28-7.46%). The low end of the Industrials' expert Michael Gorman (8.34-8.48% Discounted Cash Flow ("DCF"); 7.39% Risk Premium; 8.27% Capital Asset Pricing Model ("CAPM")) are somewhat higher, but are similarly outside the mainstream. See Ex. 550, Gorman Direct at 27, 32, 38. DOE's expert Maureen Reno makes no attempt to mitigate her low-end ROE results, and includes those very low low-end ROE results in her range of almost 130 basis points that extends from 8.31% to 9.59%. Her range is more than double those of all the other ROE witnesses, which fall within 50 or 60 point ranges. See Ex. 700, Reno Direct at 32-33.

1. Governing Legal Principles

8. The Supreme Court of the United States established requirements for determining the reasonable rate of return in Bluefield Waterworks & Improvement Co. v. Public Serv. Comm'n of West Virginia, 262 U.S. 679, 692 (1923) ("Bluefield") and Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) ("Hope"). The fixing of "just and reasonable" rates involves a balancing of investor and consumer interests. Hope, 320 U.S. at 603. Accord, § 386.610 ("substantial justice between patrons and public utilities"). "What annual rate will constitute just compensation depends upon many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts." Bluefield, 262 U.S. at 692.

9. A reasonable rate of return is one that closely approximates the profits upon capital invested in other undertakings where the risk involved and other conditions are similar. Bluefield, 262 U.S. at 689-90. "A public utility is entitled to such rates as will permit it to earn a

return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding, risks and uncertainties ...." Bluefield, 262 U.S. at 692.

10. A key concern in setting the appropriate return on common equity is that the return be reasonably sufficient to maintain the financial health of the utility. Bluefield, 262 U.S. at 693; Hope, 320 U.S. at 603. "The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." Bluefield, 262 U.S. at 693. As the Hope Court explained:

> [T]he investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Hope, 320 U.S. at 603.

11. The Bluefield Court stressed this point, declaring:

> Investors take into account the result of past operations, especially in recent years, when determining the terms upon which they will invest in such an undertaking. Low, uncertain, or irregular income makes for low prices for the securities of the utility and higher rates of interest to be demanded by investors.

Bluefield, 262 U.S. at 694.

12. In Bluefield, the West Virginia Commission ordered a rate of return of 6%. The Supreme Court found that while a 6% rate of return had been reasonable in the recent past, the

record in that case showed that the utility's rate of return had been suffering long before that rate case was brought. 262 U.S. at 695. With investors in mind, the Court held that a 6% rate of return "is substantially too low to constitute just compensation for the use of the property employed to render the service." Id. The Supreme Court, therefore, reversed the state appellate court that had affirmed the decision of the West Virginia Commission.

13. While the Hope and Bluefield Courts require that investor and customer interests be balanced in setting a *reasonable* rate of return, which depends upon many factors to be considered by the Commission, neither Court enunciated a particular methodology to arrive at a reasonable rate of return. Conversely, "[u]nder the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. It is not theory but the impact of the rate order which counts." Hope, 320 U.S. at 602 (citations omitted).

14. Following Bluefield and Hope, Missouri appellate courts agree that "the Commission is not bound to any set methodology in ensuring a just and reasonable return in setting rates." See State ex rel. Praxair, Inc. v. PSC, 328 S.W.3d 329, 339 (Mo. App. W.D. 2010); State ex rel. Noranda Aluminum, Inc. v. PSC, 356 S.W.3d 293, 311 (Mo. App. S.D. 2011).

15. In performing its duty, the Commission is bound to set a rate of return that falls within a zone of reasonableness: "Statutory reasonableness is an abstract quality represented by an area rather than a pinpoint. It allows substantial spread between what is unreasonable because too low and what is unreasonable because too high." Federal Power Comm'n v. Conway Corp., 426 U.S. 271, 278 (1976), quoting Montana-Dakota Util. Co. v. Northwestern Pub. Serv. Co., 341 U.S. 246, 251 (1951). Stated differently, the zone of reasonableness is "the zone between

the lowest rate not confiscatory and the highest rate fair to the public." In re New Jersey Power & Light Co. v. State, 89 A.2d 26, 44 (N.J. 1952).

16. Given these principles, Staff's ROE witness properly admitted that Staff's view that fairness to ratepayers means "rates that are not one penny more than necessary to be fair to the shareholders" also means that fairness to shareholders means that rates charged to customers must not be one penny less than would be fair to shareholders. See Ex. 200, Staff Report at 57; Tr. 193-194.

2. KCP&L's Recommendation: Mr. Hevert

17. Robert B. Hevert presented the Company's ROE recommendation. He is managing partner at Sussex Economic Advisors, LLC and is a Chartered Financial Analyst. He holds a bachelor's degree in business and economics from the University of Delaware, and a masters of business administration degree with a concentration in finance from the University of Massachusetts. Prior to becoming a private consultant, he was Vice President and Assistant Treasurer of Bay State Gas Company. See Ex. 115, Hevert Direct, Att. A. He has testified before this Commission on a number of occasions, including in the recent Liberty Utilities rate case, Case No. GR-2014-0152, where an ROE of 10.0% was awarded.

18. Mr. Hevert used a group of proxy companies to determine the cost of equity for KCP&L. He modified his original group of 15 companies, narrowing it to 11 in his rebuttal testimony. See Ex. 115, Hevert Direct at 13; Ex. 116, Hevert Rebuttal at 18-20. Mr. Hevert presented the results of both his and Staff's proxy groups (Ex. 116, Hevert Rebuttal at 20). As a result, there were no disputes among the cost of capital witnesses regarding the selection of a proxy group.

19. Mr. Hevert estimated KCP&L's cost of equity[5] by analyzing "market data to quantify a range of investor expectations of required equity returns." See Ex. 115, Hevert Direct at 14. He employed multiple methodologies to mitigate the effects of assumptions and inputs associated with any single approach. He utilized the DCF model in both its Constant Growth and Multi-Stage forms; the CAPM; and finally the Bond Yield Plus Risk Premium approach. Id. at 14-15.

20. The Constant Growth DCF model contains four assumptions: (1) a constant average annual growth rate for earnings and dividends; (2) a stable dividend payout ratio; (3) a constant price-to-earnings multiple; and (4) a discount rate greater than the expected growth. Id. at 15. This model is based on the theory that a stock's current price represents the present value of all expected future cash flows. In the standard formula, the first term is the expected dividend yield, and the second term is the expected long-term annual growth rate. Id.

21. Utilizing earnings growth estimates provided by Zacks, First Call, and Value Line, Mr. Hevert employed an average earnings growth rate of 5.64%. See Ex. 115, Hevert Direct at 19 & Sch. RBH-1. This analysis resulted in the following ROE estimates, as set forth in Table 3 of Mr. Hevert's Direct at page 20 (Ex. 115):

Table 3: Constant Growth DCF Results

	Mean Low	***Mean***	***Mean High***
30-Day Average	8.37%	9.54%	10.73%
90-Day Average	8.35%	9.52%	10.71%
180-Day Average	8.42%	9.59%	10.78%

[5] The terms "cost of equity" and "return on equity" (ROE) are used interchangeably. See Ex. 115, Hevert Direct at ii.

22. The Multi-Stage DCF model considers growth rates over three distinct stages. Although it defines the cost of equity as the discount rate that sets the current price equal to the discounted value of future cash flows, the Multi-Stage DCF model must be solved in an iterative or repetitive fashion, unlike the Constant Growth DCF model. Id. at 20. Mr. Hevert explained that the Multi-Stage model provides the ability to specify near, intermediate and long-term growth rates, which "avoids the sometimes limiting assumption that the subject company will grow at the same, constant rate in perpetuity." Id. at 22. He chose a long-term growth rate of 5.65%, which was based on the real gross domestic product ("GDP") growth rate of 3.27% from 1929 through 2013, and an inflation rate of 2.31%. Id. at 24.

23. Although other witnesses criticized Mr. Hevert for using a growth rate that they viewed as too high, an independent source relied upon by DOE's expert Ms. Reno confirmed that Mr. Hevert's estimate is reasonable. A report prepared by the international consulting firm McKinsey & Company (Ex. 142) stated that a long-term earnings growth estimate of 5% was "more reasonable, considering that long-time earnings growth for the market as a whole is unlikely to differ significantly from growth in GDP …." As the footnote to that sentence indicated: "Real GDP has averaged 3 to 4 percent over the past seven or eight decades, which would indeed be consistent with nominal growth of 5 to 7 percent given current inflation of 2 to 3 percent." See Ex. 142, McKinsey on Finance article at 5. Therefore, it is clear that Mr. Hevert's real GDP growth figure of 3.27% and his inflation rate of 2.31% are entirely consistent with unbiased estimates of long-term growth.

24. Mr. Hevert's Multi-Stage DCF analysis produced an ROE range of results from 9.65% to 10.38%, as set forth in the table below, contained on page 25 of his Direct Testimony.

Table 6: Multi-Stage DCF Model Results

	Mean Low	***Mean***	***Mean High***
30-Day Average	9.68%	9.99%	10.33%
90-Day Average	9.65%	9.95%	10.30%
180-Day Average	9.73%	10.03%	10.38%

25. Mr. Hevert also relied upon the CAPM which estimates the cost of equity for a company based on a risk-free return plus a risk premium. He measured the risk-free rate based upon the current 30-day average yield on 30-year Treasury Bonds, and the projected 30-year Treasury yield. He used a forward-looking approach to estimate a market risk premium based on data from Bloomberg and Value Line, applying beta coefficients that represented both relative volatility of returns, and the correlation in returns between the subject company and the market, from both Value Line and Bloomberg. The results suggested an ROE range of 10.64% to 12.09%, as set forth below in Table 7, found in Mr. Hevert's Direct Testimony (Ex. 115) at page 29:

Table 7: Summary of CAPM Results

	Bloomberg Derived Market Risk Premium	***Value Line Derived Market Risk Premium***
Average Bloomberg Beta Coefficient		
Current 30-Year Treasury (3.21%)	11.50%	11.25
Near Term Projected 30-Year Treasury (3.80%)	12.09%	11.84%
Average Value Line Beta Coefficient		
Current 30-Year Treasury (3.21%)	10.86%	10.64%
Near Term Projected 30-Year Treasury (3.80%)	11.45%	11.22%

26. Finally, Mr. Hevert utilized a Bond Yield Plus Risk Premium approach, which is based on the principle that equity investors require a premium over the return they would have

earned as a bond holder. Since equity holders owning stock are subject to returns that are more risky than returns to bond holders, equity investors must be compensated for that additional risk. See Ex. 115, Hevert Direct at 29. Mr. Hevert defined the risk premium as the difference between the authorized ROE and the prevailing level of the 30-year Treasury Yield. Utilizing a basic regression analysis, which accounted for high interest rates and authorized ROEs in the 1980s compared with very low numbers during the post-Lehman bankruptcy, his analysis estimated ROEs between 10.12% and 10.86%, as depicted below in Table 8 found in Mr. Hevert's Direct Testimony (Ex. 115) at page 32.

Table 8: Summary of Bond Yield Plus Risk Premium Results

	Return on Equity
Current 30-Year Treasury (3.21%)	10.12%
Near Term Projected 30-Year Treasury (3.80%)	10.23%
Long Term Projected 30-Year Treasury (5.45%)	10.86%

27. Based upon all of his analyses, Mr. Hevert recommends that the Commission award an ROE of 10.30%. See Ex. 115, Hevert Direct at 55; Ex. 116, Hevert Rebuttal at 95. In his Rebuttal Testimony, Mr. Hevert recommends a range of ROE estimates from 10.00% to 10.60%. See Ex. 116, Hevert Rebuttal at 95; Ex. 117, Hevert Surrebuttal at 48.

3. Staff's Recommendation: Mr. Marevangepo

28. Staff Witness Zephania Marevangepo utilized extraordinarily low growth rates and estimates of cost of equity which produced a Constant Growth DCF cost of equity estimate of 7% to 8%. See Ex. 200, Staff Report at 44. He initially conceded that these figures were not to be considered by the Commission but "to provide the information,"[6] but then back-tracked and

[6] Tr. 217 (June 15, 2015).

said "7 to 8 is appropriate."[7] Asked for clarification, he once again stated Staff was not recommending that range.[8] Given that Staff's Constant Growth DCF analysis used a growth rate of 3.5-4.5% in this case, and that a growth rate of 5.0-5.5% was rejected by the Commission in the last KCP&L rate case,[9] the results of this analysis should be ignored.

29. Mr. Marevangepo then proceeded to the Multi-Stage DCF analysis. Here, Staff utilized a slightly higher 4.4% growth rate, but this still resulted in an ROE estimate of 8.18% to 8.28%, which would likely be viewed as confiscatory in any context. See Ex. 200, Staff Report at 53. Even with this low growth rate for the final stage of the Multi-Stage DCF analysis, it is telling that Staff used the much higher analysts' growth rate estimates of 5.57% to 5.74% in the first stage of its analysis. Id. at 43, 45. However, given the overall results, Staff recognized that these ROE estimates were well outside the mainstream, and proceeded to other models.

30. Using the CAPM, Staff erroneously performed only a backward-looking, historical analysis, as opposed to a forward-looking model to reflect investor expectations. See Ex. 200, Staff Report at 54 ("Staff relied on historical capital market return information through the end of 2013."). Cf. Ex. 116, Hevert Rebuttal at 39-41 (not appropriate to rely exclusively on historical data in developing a market risk premium). "Staff relied on the historical difference between earned returns on stocks and earned returns on bonds" for its market risk premium. Id. at 55. All of the other experts used either a forward-looking model (Ex. 115, Hevert Direct at 25-28), or both a forward-looking estimate and historical data to develop market risk premium estimates. See Ex. 550, Gorman Direct at 35-38; Ex. 700, Reno Direct at 29-30.

[7] Tr. 218:16-17.
[8] Tr. 218:25-219:6.
[9] Tr. 218:25-219:19.

31. As a result, Staff's estimated ROE under the CAPM resulted in another very low ROE range, this one from 6.28% to 7.58%. Recognizing that these were well below the zone of reasonableness, Staff experimented with a "Rule of Thumb."

32. Resorting to a method suggested in a chartered financial analyst text book, Staff estimated the cost of equity by simply adding a risk premium to the yield-to-maturity of recent utility bond averages. Adding what Staff characterized as "the typical risk premium" of 3% to 4%, it calculated ROE ranges of 6.75-7.60% and 7.75-8.6%, respectively. See Ex. 200, Staff Report at 56.

33. Recognizing that none of these ROE estimates would pass zone of reasonableness muster either, Staff employed an analysis of average authorized ROEs from other public utility commissions. This analysis was also unsatisfactory for Staff because it led to an average ROE for 2014 of 9.92%, compared with the 2013 average of 10.02%. Id. at 56. Staff also reported that allowed ROEs for fully-litigated cases were 10.05% to 2014, which is even higher than Mr. Gorman's testimony which found that fully-litigated cases in 2014 averaged 9.63%. Compare Ex. 200, Staff Report at 57:17-18 with Ex. 552, Gorman Surrebuttal at 3.

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

35. What was most illuminating during the evidentiary hearing was Staff's agreement with a recent Moody's report on the U.S. regulated utility sector which concluded that lower authorized ROEs were acceptable only in the context of "persistently low interest rates and a

comprehensive suite of cost recovery mechanisms." See Ex. 141, Moody's Sector In-Depth Report on U.S. Regulated Utilities (Mar. 10, 2015). Mr. Marevangepo admitted that as interest rates begin to rise, if utilities like KCP&L do not have access to adequate cost recovery mechanisms, low ROEs are problematic. See Tr. 204-05.

36. Staff's expert also admitted that when utilities' earned ROEs are not close to their authorized equity returns, this is a negative from an equity market valuation perspective. See Tr. 210-11. He noted that KCP&L's parent company Great Plains Energy Incorporated ("GPE") was ***not*** listed among the companies earning high ROEs. See Tr. 211. As the evidence indicates, KCP&L's earned equity returns in Missouri have fallen well below its Commission-authorized ROEs in Missouri. The authorized ROE set by the Commission in this case must be coupled with allowing the Company access to regulatory mechanisms that will permit more timely cost recovery, as well as accounting treatments that do not harm its income statement. See Ex. 118, Ives Direct at 4.

37. While Staff has properly recognized the dangers of a low ROE under these circumstances, its analysis in this case is highly suspect and must be rejected. Staff's overall conclusion that the cost of equity has declined since KCP&L's last rate case decision in January 2013 is erroneous. As Mr. Hevert pointed out, the cost of equity has actually increased by 20 basis points under a CAPM analysis. See Ex. 116, Hevert Rebuttal at 15 & Sch. RBH-18. Similarly, the Bond Yield Plus Risk Premium model indicates that the cost of equity has essentially remained unchanged since the Company's last case, with results of 10.11% and 10.10%, respectively. Id. & Sch. RBH-6. Given Staff's statement that 2014 calendar year ROEs

averaged 9.92% (based on 37 decisions),[10] Staff's recommendation of a 9.25% ROE is not reasonable.

4. Industrials' Recommendation: Mr. Gorman

38. Mr. Gorman relies on three models to produce his recommended ROE of 9.10%. His DCF calculations result in an 8.60% ROE recommendation, which he averaged with his CAPM result of 9.05% to reach his low recommendation of 8.80% (the actual average being 8.825% which he adjusted downward to 8.80%). See Ex. 550, Gorman Direct at 39. His high recommendation is 9.40%, based on his risk Premium analysis. Id.

39. As Mr. Gorman ultimately admitted at the evidentiary hearing, Mr. Hevert had properly concluded that Mr. Gorman had weighted his DCF and CAPM results at 25% each, and gave a 50% value to his Risk Premium figure. Through this process, he arrived at his recommendation of 9.10%. See Ex. 550, Gorman Direct at 39; Tr. 274; Ex. 116, Hevert Rebuttal at 67.

40. Because his recommendation of 9.10% is well below the returns authorized by even the least supportive regulatory commissions, Mr. Gorman's proposal would increase KCP&L's relative risk in the electric utility industry and, therefore, its cost of capital. Investors' perceptions of the regulatory environment in the state of Missouri would be negatively affected. See Ex. 116, Hevert Direct at 70.

41. Given Mr. Gorman's recognition of recent growth in the economy, the increase in utility bond yields, and the decline in utility stock prices (Tr. 268-70), it is not surprising that in testimony filed in early June with the Illinois Commerce Commission in the pending Ameren

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[10] This average includes surcharge/rider generation cases with higher ROEs, as well as distribution and transmission ROEs which tend to be lower. See Ex. 139, Summary of Authorized ROEs.

Illinois natural gas rate case, his ROE recommendation was 9.25%.[11] As Mr. Gorman acknowledged that ROEs for gas distribution utilities are generally below those of vertically-integrated electric utilities like KCP&L, his range in the Ameren Illinois gas case (9.0% to 9.5%) would likely be even higher for KCP&L. See Tr. 267-68.

42. While Mr. Gorman appears to use standard methods in arriving at his DCF and CAPM analyses, he employs methods that actually contradict each other. On the one hand, Mr. Gorman relies on a study to support his CAPM results that properly adjusts the recent abnormal expansion in Price/Earnings ratios to demonstrate the reasonableness of his market risk premium. See Ex. 550, Gorman Direct at 37-38. The effect of that adjustment is to reduce his CAPM estimates. See Ex. 116, Hevert Rebuttal at 76:11-15. On the other hand, however, Mr. Gorman's DCF estimates reflect unusually high Price/Earnings ratios and low growth rates of 4.4% to 4.89%, which he accepts without question and which result in his low DCF ROE estimates of 8.19% to 8.60%. See Ex. 550, Gorman Direct at 17, 25-27; Ex. 116, Hevert Rebuttal at 74-76. Consequently, his CAPM and DCF analyses actually contradict each other, but they have the common effect of reducing his recommended ROE for the Company. See Ex. 550, Gorman Direct at 37-38; Ex. 116, Hevert Rebuttal at 75-76.

43. Although Mr. Gorman protested that his methods were unfairly depicted as a "weighting" process to come to his ROE recommendations, it is clear that he has employed a process of weighting throughout his testimony. In arriving at his Risk Premium recommendation, he weighted the low-end of his range (9.21%) at 25% and his high-end (9.56%) at 75%, in order to produce his recommendation of 9.40% (actually 9.385%, which he rounded up). See Ex. 550, Gorman Direct at 33 & fn. 24-25.

[11] See Direct Testimony of Michael P. Gorman, In re Ameren Illinois Co., No. 15-0142 (Ill. Comm. Comm'n, filed June 9, 2015).

44. Mr. Gorman also applied weights to his CAPM ranges, giving his low-end return estimate (8.27%) a 25% rate and the high-end estimate (9.30%) a 75% weight. Id. at 38. In past cases, he has even completely disregarded the results of his models, as he did in KCP&L's last rate case. See Tr. 275-76. There, Mr. Gorman's recommendation of a midpoint of 9.30% was based on his Risk Premium ROE of 9.1% and his DCF recommendation of 9.5%. He abandoned his CAPM result, which came in at 8.40%. See Gorman Direct at 39, In re Kansas City Power and Light Co., Case No. ER-2012-0174.

45. While returns on equity and the calculations supporting them require the employment of judgment and discretion, it is apparent that over the past six years Mr. Gorman has exercised his judgment to continuously lower his ROE recommendations.

46. As shown in Exhibit 144, in KCP&L's 2010 rate case, Case No. ER-2010-0355, Mr. Gorman was 65 points above Staff's recommendation when he proposed a 9.65% ROE. In various rate cases since that decision, his recommendations declined to 30 points above Staff in the 2012 Ameren Missouri case, and 30 points above Staff in KCP&L's last rate case. They have continued to decline to only 5 points above Staff in Ameren Missouri's last rate case. Now, in this case, Mr. Gorman's recommendation has dropped to 15 points below Staff's recommendation of 9.25%. One can only conclude that Mr. Gorman is adjusting the results of his models and calculations in order to provide increasingly lower ROE recommendations in KCP&L's rate cases for the Fortune 500 companies that he represents.[12]

5. DOE's Recommendation: Ms. Reno.

47. Maureen Reno, an independent contractor currently providing services through Exeter Associates, Inc. to DOE, recommends the lowest ROE for the Company of all the experts

[12] Tr. 285 (noting that the Fortune 500 companies within the Missouri industrial groups "are all relatively large, successful companies").

in this case, stating that 9.0% is the median of her various methodologies. See Ex. 700, Reno Direct at 32. Her recommended range is the widest of any of the cost of capital experts, from a low of 8.2% to a high of 9.6%. Id. When analyzed in the context of authorized ROEs from other state utility commissions, her recommendation of 9.0% is plainly unreasonable. Moreover, when this recommendation is judged in the context of the growth rates contained in her work papers, it is clearly outside the zone of reasonableness.

48. Ms. Reno conducted seven calculations using the DCF model, three for a single-stage model and four for a three-stage model. See Ex. 700, Reno Direct at 27. Despite the fact that four of these ROEs were 8.62% and below, she did not adjust her methodology or increase her growth rates or make other changes to her analysis, and instead proceeded to arrive at ROE estimates that she agreed were "entirely out of the mainstream of returns on equity that have been authorized by utility commissions in this country." See Tr. 242. Two of the remaining ROEs were at the 9.0% level (one at 9.0% and another at 9.01%). The highest ROE which she derived from her DCF analysis was a 9.18%, far below the equity returns awarded by any public utility commission. See Tr. 240-42.

49. Her CAPM analysis yielded higher ROEs of 9.26% and 9.59%. See Ex. 700, Reno Direct at 30. However, Ms. Reno used outdated historical information from the Duff & Phelps Large Stock Arithmetic Average Return from 2013 and the projected yield on the 10-year Treasury Bond. Id. at 29: 17-18, 30: 1-3. If more current information is used, as well as the 30-year long-term Treasury Bond's projected yield, her CAPM result increases to 9.88%. See Ex. 116, Hevert Rebuttal at 61-62.

50. Ms. Reno acknowledged that the economic trends over the past two months are positive, that stock prices of electric utilities have declined, and that interest rates are rising. See

Ex. 701, Reno Surrebuttal at 5-6: Tr. 237-40 (no dispute with Mr. Hevert's surrebuttal list of economic trends listed at p. 47 of Ex. 117). However, Ms. Reno disagreed with Mr. Hevert's use of analysts' growth rates, criticizing them as too optimistic. See Ex. 701, Reno Surrebuttal at 8-9. In support of this argument, Ms. Reno cited a 2010 study by McKinsey & Company, which was marked as Exhibit 142.

51. Ms. Reno acknowledged the existence of the Securities and Exchange Commission's Regulation AC which requires brokers, dealers and associated analysts to certify that their views expressed in research reports accurately reflect the analyst's personal views. See Tr. 245-47; Ex. 143 at 2 (Summary of Regulation AC). She agreed that analysts are required to disclose whether they are being paid compensation related to specific recommendations or to attest that their compensation will not be affected by their recommendations. See Tr. 245. She also admitted that similar restrictions applied to public appearances by analysts who are all subject to the federal securities laws and the SEC's anti-fraud enforcement proceedings. See Tr. 246-47. She didn't present evidence that any of the analyst surveys used by Mr. Hevert had been cited for conflict of interest violations and could not recall any. Id. at 247.

52. The McKinsey article relied upon by Ms. Reno confirmed that "actual earnings growth of 6 percent" had been experienced over the last 25 years, and declared "that long-term earnings growth for the market as a whole is unlikely to differ significantly from growth in GDP …." See Ex. 142, McKinsey on Finance Article at 4-5. Footnote 9 in the article stated:

> Real GDP has averaged 3 to 4 percent over the past 7 or 8 decades, which would indeed be consistent with nominal growth of 5 to 7 percent given current inflation of 2 to 3 percent.

53. These growth rates are entirely consistent with Mr. Hevert's Real GDP growth rate of 3.27% and his inflation estimate of 2.31% which he used to arrive at his Multi-Stage DCF

growth rate of 5.65%. See Ex. 115, Hevert Direct at 24. Indeed, these growth rates are consistent with Ms. Reno's Schedule MLR-5a, which uses a range of 5.0% to 5.9%.

54. Given Ms. Reno's admission that her ROE estimates are entirely outside the mainstream of ROE's authorized by any public utility commission in recent history, her analysis and recommendations should be disregarded. See Tr. 242; 251-52 (response to question from Comm'er Hall).

6. ROEs Authorized by Other Public Utility Commissions

55. This Commission has always compared its ROE analysis with those of other commissions to make certain that its decision is not out of the mainstream. Although it does not "unthinkingly mirror the national average,"[13] the Commission has concluded that "the national average is an indicator of the capital market" in which a utility "will have to compete for necessary capital". See Report and Order at 122, In re Kansas City Power & Light Co., Case No. ER-2010-0355 (2011).

56. The ROE experts in this case did not agree on the recent trends in authorized ROEs. Mr. Gorman continued to contend that authorized ROEs are declining, but he focuses only on "fully litigated cases" and ignored ROEs that have been approved for all vertically-integrated electric utilities. See Ex. 552, Gorman Surrebuttal at 3; Tr. 298-300.

57. Exhibit 139 (Summary of Authorized ROEs) accurately sets forth the authorized ROEs from the first quarter of 2014 through the second quarter of 2015, as available at the time of the evidentiary hearing:

[13] Report and Order at 19, In re Missouri Gas Energy, Case No. GR-2004-0209 (2004).

Summary of Authorized ROEs							
		2014Q1	2014Q2	2014Q3	2014Q4	2015Q1	2015Q2
Electric	Vertically Integrated	9.86%	10.10%	9.90%	9.94%	9.64%	9.83%
Electric	Distribution	9.38%	9.65%	9.64%	9.22%	9.75%	NA
Electric	Vert. Int. & Distribution	9.57%	9.83%	9.79%	9.78%	9.66%	9.83%
Electric	Limited-Issue Rider	11.33%	NA	9.6%	NA	11.25%	NA
Electric	All	10.23%	9.83%	9.87%	9.78%	10.37%	9.77%
Natural Gas	Distribution	9.54%	9.84%	9.45%	10.28%	9.47%	9.65%
Natural Gas	Limited-Issue Rider	NA	NA	NA	NA	NA	NA

58. The numbers speak for themselves. During each of the past six quarters the average ROE issued to vertically-integrated electric utilities was 9.83% and above, except for the first quarter of 2015 which reflected a decline in economic productivity. Even with this Commission's ROE of 9.53% awarded to Ameren Missouri, the second quarter of 2015 reflected returns more consistent with the four quarters of 2014. See Ex. 139, Summary of Authorized ROEs.[14]

59. Based on this evidence, the Commission should find that Mr. Hevert's 10.3% recommendation, based on a range of 10.0%-10.6%, is a just and reasonable rate, reflective of

[14] The most recent Regulatory Research Associates report indicates no change in the 9.83% ROE average of vertically-integrated electric utilities for the second quarter of 2015. See RRA Regulatory Focus at 5 (July 16, 2015) (average of Wisconsin Public Service, Union Electric and Appalachian Power).

improvements in the economy and higher interest rates, and one that will permit KCP&L to continue to attract investors and to be financially sound.

B. Capital Structure: What Capital Structure Should be Used for Determining Rate of Return?

60. The Company recommends the following capital structure, based upon the actual capital structure of its holding company GPE, as of May 31, 2015:

Proposed Capital Structure for the Company	
Long-term debt	49.09%
Preferred Stock	0.55%
Common Equity	50.36%
Total	100%

See Ex. 115, Hevert Direct at 53; Ex. 166, Klote True-Up Rebuttal at 2.

61. Staff offered a similar recommendation, initially based upon GPE's capital structure as of December 31, 2014. See Ex. 200, Staff Report at 37. Mr. Gorman, on behalf of the Industrials, did not oppose this recommendation. See Ex. 550, Gorman Direct at 10. The Commission has utilized GPE's capital structure for KCP&L in the past several rate cases. See Report and Order at 24-26, In re Kansas City Power & Light Co., Case No. ER-2012-0174 (Jan. 9, 2013); Report and Order at 31-32, In re Kansas City Power & Light Co., Case No. ER-2007-0291 (Dec. 6, 2007). The capital structure of the Company has also been set by the Kansas Corporation Commission using the capital structure of GPE. See Order, In re Kansas City Power & Light Co., Docket No. 10-KCPE-415-RTS at 41 (Nov. 22, 2010); Order, In re Kansas City Power & Light Co., Docket No. 12-KCPE-764-RTS (Dec. 13, 2012) (no change in capital structure).

62. This Commission has also set the capital structure of the Company's sister Public Utility according to that of GPE. See Report and Order at 24-26, In re KCP&L Greater Mo. Operations Co., Case No. ER-2012-0175 (Jan. 9, 2013).

63. In his rebuttal testimony Mr. Hevert stated that the "continued use of GPE's consolidated capital structure across all regulatory jurisdictions" would provide a "consistent approach" that avoids disagreements regarding operating company equity being funded by lower cost debt or preferred capital from the holding company, or concerns that one operating company's capital structure may have more or less equity than another operating company. See Ex. 116, Hevert Rebuttal at 63. He also observed that this approach is consistent with industry practice. Id.; Ex. 115, Hevert Direct at 52-53. Ms. Reno conceded that she was out of step with all of the other cost of capital expert witnesses in this case. See Tr. 234-35. She offered no further explanation of her position during redirect examination at the evidentiary hearing. Id. at 254-55.

64. DOE has offered no good reason for this Commission to depart from setting the capital structure of KCP&L on the basis of its parent holding company, as it has for the past ten years.

C. Cost of Debt: Should Short-term Debt be Used in the Capital Structure to Set Rates for KCP&L and, If So, at What Cost?

65. Ms. Reno was also the only cost of capital expert who recommended that the Commission include short-term debt in the capital structure used to set rates for the Company. As noted above, KCP&L recommended the use of long-term debt, preferred stock and common stock, a proposal with which Staff and the Industrials either supported or did not oppose. See Ex. 200, Staff Report at 37; Ex. 550, Gorman Direct at 10. Ms. Reno proposed that short-term debt be included in the capital structure used to set rates, with long-term debt at 47.89%; short-

term debt at 4.70%; and equity at 47.40%. See Ex. 700, Reno Direct at 10. However, no short-term debt has been included in KCP&L's capital structure for rate-setting purposes in the past ten years. See Report and Order at 25, In re Kansas City Power & Light Co., Case No. ER-2012-0174 (2013); Report and Order at 125-29, In re Kansas City Power & Light Co., Case No. ER-2010-0355 (2011) (no issue of short-term debt); Report and Order at 32, In re Kansas City Power & Light Co., Case No. ER-2007-0291 (2006).

66. Moreover, Mr. Hevert explained that excluding short-term debt from the capital structure is consistent with the Federal Energy Regulatory Commission ("FERC") Order 561, which set forth the formula for calculating the allowance for funds used during construction ("AFUDC"). Pursuant to that order, the AFUDC rate assumes that short-term debt is first used to fund construction work in progress ("CWIP"). Since short-term debt is first used to fund CWIP, that same debt cannot be included in the regulatory capital structure without double counting that debt. See Ex. 116, Hevert Rebuttal at 64.

67. Mr. Hevert also disagreed with Ms. Reno's proposed short-term debt rate as well as her proposed long-term debt rate. Id. at 65-66. In her surrebuttal testimony, Ms. Reno accepted these corrections. See Ex. 701, Reno Surrebuttal at 15-16.

68. There is simply no good reason for the Commission to include short-term debt in the mix of capital used to set KCP&L's rates.

III. REGULATORY MECHANISMS: LAW AND POLICY

69. Missouri's regulatory framework for electric public utilities is not "broken," but it can be improved. KCP&L disagrees with the arguments offered by opponents that any change or improvement to the regulatory framework is an indictment of the core regulatory framework of Missouri. See Tr. 1257 (Mers). KCP&L's proposals add proven regulatory tools to the Commission's resources which would strengthen the regulatory environment in Missouri for

both utility and customers. The regulatory mechanisms offered by KCP&L are practical solutions that preserve and enhance the underlying regulatory framework consistent with constitutional principles identified by the U.S. Supreme Court. In contrast, opponents offer nothing new to help the Commission manage the new challenges of flat load growth, unprecedented environmental and cyber-security mandates, and steadily increasing costs during a period of rapid evolution in the energy world.

A. Statutory Authority to Authorize Trackers

70. The Commission has statutory authority to grant each of the trackers proposed by KCP&L. Section 393.140[15] states that:

> The commission shall: …
>
> (4) Have power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by gas corporations, electrical corporations, water corporations and sewer corporations engaged in the manufacture, sale or distribution of gas and electricity for light, heat or power …. It may also, in its discretion, prescribe, by order, forms of accounts, records and memoranda to be kept by such persons and corporations. ….

71. Similarly, Section 393.140(8) provides that the Commission has the "power, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited."

72. Despite opponents' arguments to the contrary,[16] these statutes clearly give the Commission authority to authorize deferred accounting mechanisms at its discretion.

B. Case Law on Deferral Accounting

73. While sparse, Missouri case law supports the Commission's authority to use deferral accounting treatment for a variety of costs. The most common application of this

[15] All statutory citations are to the Missouri Revised Statutes (2000), as amended, unless otherwise noted.
[16] See Tr. 1280, 1283-84, 1295 (MECG).

authority, and what has become the backbone of natural gas utility regulation, is the purchased gas adjustment/actual cost adjustment ("PGA/ACA") mechanism. The PGA/ACA mechanism is deferred accounting which – although it is much more expansive in effect than the trackers proposed by KCP&L in that it provides for the adjustment of customer rates between rate cases – serves the same function as the requested tracker proposals in this case: To track actual costs against costs put into rates. The Court of Appeals found that the Commission had implied authority for such mechanisms when certain procedural protections are in place. State ex rel. Midwest Gas Users' Ass'n v. PSC, 976 S.W.2d 470 (W.D. Mo. App. 1998). These procedural protections, a contested case, have been satisfied in this case.

74. Opponents point to State ex rel. Office of Public Counsel v. PSC, 858 S.W.2d 806 (W.D. Mo. App. 1992) ("OPC"), for the proposition that the Commission's authority is limited to only the most narrow circumstances for the authorization of trackers. But the facts of OPC belie this assertion. First, OPC is distinguishable from this case in that it was an after-the-fact AAO case. Here, KCP&L has not sought an AAO for costs already incurred, rather the Company is asking for tracker mechanisms for known cost increases in the near future. So OPC is not applicable. But even if it were, OPC affirmed the Commission's authority to define "extraordinary items" in the broadest of terms to include the cost of government mandates, specifically the Clean Air Act. Id. Additionally, it affirmed the Commission's authority to grant deferred accounting treatment for such costs as depreciation and carrying-cost associated with new construction. Id. So while the Court of Appeals did speak of "extraordinary items," it clearly recognized the Commission's exceedingly broad discretion to determine what is ordinary and what is not. Again, in OPC the Commission found that depreciation and federal

environmental regulations were extraordinary items. Further, the Court of Appeals did not explicitly limit deferral accounting to only extraordinary items.

1. Maintaining Bi-Lateral Fairness in Extraordinary Times

75. The regulatory mechanisms proposed by KCP&L are designed to preserve the result of Commission decisions in extraordinary times. First it is important to understand what the Commission's job is:

> It is axiomatic that a just and reasonable utility rate is bilateral. Like a coin it has two sides. On the one side it must be just and reasonable from the standpoint of the utility. On the other side it must be just and reasonable from the standpoint of the utility's customers. This bilateral aspect of utility rate making, although susceptible of easy expression in theory, is considerably more difficult to achieve.
>
> For these reasons, the court in State ex rel. Missouri Water Company v. Public Service Commission [308 S.W.2d 704 (Mo. 1957)] recognized, if not explicitly, certainly implicitly, that rate making bodies, with the ambit of their statutory authority, are vested with considerable discretion to make such pragmatic adjustments in the rate making process as may be indicated by the particular circumstances in order to arrive at a just and reasonable rate. [State ex rel. Valley Sewage Co. v. PSC, 515 S.W.2d 845, 850 (Mo. App. 1974).]

76. This bilateral fairness to the utility and to the customer is relatively easy to attain in *ordinary* times, where the rate year has a semblance of parity with the historic test year. Missouri has used the historic test year, not out of blind ideological allegiance to "the way it has always been done," but because it has generally worked on a practical, financial level. But these are not ordinary times. To the extent that the historic test year will not be reasonably representative of the rate year, these are extraordinary times and demand new approaches.

77. In the absence of such regulatory mechanisms, any notion of bilateral fairness being achieved through a Commission rate order based solely on historical experience quickly dissipates in today's rising cost environment. Changes in the cost of fuel, transmission, Critical Infrastructure Protection ("CIP")/cyber-security and property taxes are significant and unpredictable. They are the major cause for electric utilities having to file frequent and

successive rate cases. This is particularly true where there is little or no customer growth. Ironically, the opponents to new regulatory tools bemoan the number of recent rate cases, despite the fact that such tools would reduce the number of rate cases. The solution offered by opponents to cost-recovery, regulatory lag and barriers to earning authorized returns on equity? File more rate cases!

78. The Company agrees that rate cases are expensive, time-consuming and resource intensive. The alternative regulatory mechanisms proposed by KCP&L are designed to reduce the number of rate cases while protecting the interests of both customers and shareholders.

79. KCP&L asks for an ROE that maintains its financial integrity in a competitive capital market. But the Company's financial integrity also depends on a reasonable opportunity to earn that ROE. An authorized ROE becomes a work of fantasy if the Commission does not act to ensure the Company has the tools to have a reasonable opportunity to realize that return. KCP&L has proven this to be the case over the last several years. Without those regulatory tools, the bi-lateral fairness established by the Commission order becomes a house of cards in a wind storm - short-lived.

C. Tracker Mechanisms

80. The Company has asked for tracker mechanisms for property taxes, CIP/Cyber-security operations and maintenance ("O&M") expenses and Southwest Power Pool Inc. ("SPP") transmission expenses (if not included in an FAC). The necessity of incurring these costs is not in question. There is no serious dispute that these costs are largely outside the control of the Company. No one disputes that these costs will increase beyond the historical test-year amount in the rate-year. It is simply a given that the Company will lose money on these costs starting day one without a tracker. The purpose of a tracker mechanism is to bring *transparency* to the amount of money lost or gained by the Company on these expenses and give the Company or

consumers an opportunity with a future rate case to recover the loss. A tracker gives the Commission and regulators more information, not less. It operates as a feedback-mechanism, giving the Commission a comparison between the rate-setting process and the reality of the rate-year. Nothing about the operation of a tracker diminishes the general rate case as the process by which rates are set and all relevant factors are examined.

81. Some parties are opposed to the transparency afforded by a tracker based on the fallacy that costs should not be considered in isolation. But again, a tracker is not a rate-setting mechanism and is only considered for recovery within a general rate case among all relevant factors. State ex rel. Midwest Gas Users' Ass'n v. PSC, 976 S.W.2d 470 (W.D. Mo. App. 1998) (contrasting deferred accounting tools that do not set rates from a FAC that changes rates). The Company believes that regulators would be better equipped with more information on these costs, not less.

82. Opponents point to the seminal case State ex rel. Util. Consumers Council of Missouri, Inc. v. PSC, 585 S.W.2d 41 (Mo. en banc 1979) ("UCCM"), for the idea that costs should not be considered in isolation and tracker mechanisms generally violate the fundamentals of ratemaking. First, note, UCCM is about the FAC prior to the passage of Section 386.266, and irrelevant to trackers, such as those proposed by KCP&L, that do not set rates. But, the opponents' posturing of UCCM is a huge over-simplification: Where the UCCM Court did any actual analysis of the type of costs covered by the FAC, it differentiated costs "affected by a utility's management decisions." Id. at 52. The UCCM Court also differentiated "direct costs" from a cost which is linked to total sales:

> Unlike the tax adjustment clause approved in Hotel Continental, a charge under a fuel adjustment clause is not a direct charge. A tax adjustment charge is figured by determining the amount of gross receipts tax applicable to the amount of the customer's bill. The fuel adjustment charge is figured by estimating the amount

> of sales which will be made in a given month and Allocating to each kilowatt-hour sale a percentage of the increase in fuel costs incurred during a prior month. Thus, if higher costs are incurred in January, the amount of these costs each customer will pay in March will depend in part not only on the amount of electricity he uses but on the total amount of electricity used. If fewer sales are made, his proportionate charge will be greater than if more sales are made. Id. at 52.

> The Supreme Court explained:

> Any change in other cost factors ***could not change this direct relationship***, and thus any change in the tax rate could properly be taken into consideration under the TAC without regard to changes in other costs and without disturbing the statutory scheme that changes in rates of return not occur without considering all cost factors and without public awareness and understanding of rates proposed to be charged. Id. (Emphasis added.)

83. **The question is not if there are conceivably any other cost decreases within the entire universe of utility operations which could provide an "offset" to the cost being tracked. The question is whether there are cost factors which could change the actual cost component being tracked.** The costs for which KCP&L has requested a tracker mechanism are all essentially direct costs. In other words, they are not affected by overall operations of the Company or changed by other costs. They are direct charges to the Company largely out of management's control. These costs are thus similar to the costs considered in Hotel Continental v. Burton, 334 S.W.2d 75, 77 (Mo. 1960).

84. Company opponents have constructed multi-factor tests out of whole cloth for assessing the appropriateness of using a tracker mechanism posing those standards as impenetrable legal or policy obstacles to the trackers proposed by KCP&L. In fact, the Commission has considerable discretion to determine when trackers are appropriate. Tracker requests made during rate cases should be granted if it is determined that basing the rate allowance for such costs on historical levels, with no ability to account for changes in those cost levels likely to occur in the future, is likely to lead to a mismatch of costs and revenues with

resulting earnings impacts during the future period when rates will be effective. Factors relevant to the determination include: the magnitude of the earnings impacts associated with changes in levels of the relevant cost of service item; the degree to which the relevant cost of service item is subject to management control; and overall cost of service trends for the company under consideration. Ex. 120, Ives Rebuttal at 14. The Company could also envision a need for a tracker in a situation where there was a known cost decrease in the near future and the assessment method proposed by KCP&L would accommodate this.

85. The public interest is inherent in all decisions of the Commission and we take it as a given the Commission understands this overarching consideration. KCP&L does not believe the "public interest" is a mutually exclusive consideration inuring to the benefit of any one party to the rate case. Because the costs for which KCP&L has proposed tracker treatment are largely beyond the control of management, there are really no logical or comparable cost offsets, despite claims to the contrary by Staff, OPC and MECG. Moreover, the alternative to trackers proffered by Staff, OPC and MECG – annual rate cases – would result in excessive regulatory costs and only mitigate to an extent the Company's earnings shortfalls. This is because any lost earnings experienced during the test year are gone forever. That annual filing of rate cases by KCP&L is no realistic solution is borne out by recent history; the Company filed 7 rate cases from 2006 to 2013 and suffered earnings shortfalls of approximately $32 million each year, on average. Ex. 121, Ives Surrebuttal, p. 32. To expect a different result by undertaking the same action in the future is folly.

D. Fuel Adjustment Clause

86. The Commission's authority to grant a FAC is authorized under Section 386.266.4. But for this law being passed in 2005, a FAC would be unlawful under UCCM.

87. The purpose for the FAC is enshrined in the first subsection of Section 4 of the statute: the FAC is to be "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity." Section 386.266.4(1). This provision should guide the Commission on the appropriateness and design (the right cost components, timing issues) of the FAC. Simply, the FAC should be designed towards allowing the Company an opportunity to earn its authorized ROE. This is the explicit point of the statute.

88. With this point in mind, it is important to understand the new energy environment created by the SPP's Integrated Marketplace ("IM"). KCP&L's opportunity to earn its authorized return is dependent upon an understanding that it sells all of its power into the SPP IM and purchases all of its power out of the SPP IM. It does not serve its native load and then sell the remainder of power produced if any into the market. That is not how it works.[17] KCP&L must under the rules of SPP maintain sufficient capacity to meet SPP's minimum required capacity margin. This rule ensures that there is sufficient capacity within SPP to serve the region—it is inconsequential and irrelevant to the purchasing and selling of KCP&L's power into and out of the SPP IM.

89. The creation of regional energy markets revolutionized how utilities purchase and sell and transmit power.[18] Section 386.266—statutorily authorizing the FAC—is sufficiently flexible to deal with the 21st century regional energy markets if the Commission allows it. Or the Commission can unreasonably interpret the statute into the dust bins of history by limiting its effective application to a reality that no longer exists.

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[17] See Ex. 108, Carlson Surrebuttal at 2-4 (explaining the difference between the Energy Imbalance Service market and the IM).

[18] The justness and reasonableness of regional wholesale market rates is established under the jurisdiction and authority of the Federal Energy Regulatory Commission (FERC). 16 U.S.C. §824d(a)

E. **Economic Incentive of an Arbitrary Disallowance**

90. Much has been made of the (dubiously coined) "sharing mechanism" as a supposed economic incentive. Under the traditional regulatory paradigm prudently incurred costs are not "shared" - the costs are recovered. Less than full recovery is called a "disallowance." Assuming that fuel costs are prudently incurred the "sharing mechanism" is—under the traditional regulatory paradigm—an arbitrary disallowance made without any evidence of any imprudent acts by the Company. So the question is: Does an arbitrary disallowance create an economic incentive for the Company to better manage fuel costs?

91. The answer is no. Although an FAC will reduce the under-recovery of fuel costs when fuel cost exceed those in the test year and will likewise reduce any over-recovery when fuel costs are lower, fuel costs will continue to affect the Company's earnings. The Company has indicated a number of ways that incentives remain to incur fuel costs prudently even with an FAC that records all fuels costs. In other words, with or without an FAC, KCP&L will have an incentive to efficiently manage fuel costs. In lieu of any evidence showing a change in procurement strategy or other decision-making processes, the Company's opponents' argument that the arbitrary disallowance provides the supposed economic incentive is an entirely theoretical argument without substance. The position asks the Company to prove a negative - the nonexistence of an economic incentive. Of course, the only way to provide evidence that such an economic incentive either does or does not exist would be for the Commission to allow for full recovery and then analyze whether or not the FAC without an arbitrary disallowance had an effect on fuel procurement strategies or other management behavior. Given the significant and long term use of FACs across the country, if the theoretical argument had merit this type of disallowance would be common place. It is not.

92. The only thing accomplished via a percentage disallowance is to arbitrarily benefit either the utility or customers depending on the fuel cost environment. Right now, given the increasing costs of fuel, purchased power and transmission the proposed disallowance will inure to the short-term benefit of customers. But this approach is short-sighted and, ultimately, ratepayers in Missouri will benefit more from policies based on empirical evidence than unsupported theories.

F. Volatility, Magnitude and Un-manageability

93. While KCP&L has shown that its fuel, purchased power and transmission costs are significantly volatile, large and unmanageable, it is worth noting that the Commission is not limited to these factors in authorizing an FAC. See 4 CSR 240-20.090(2)(C). The Commission has wide discretion to authorize an FAC if it deems that the FAC is appropriate under Section 386.266. While 4 CSR 240-20.090(2)(C) provides factors that the Commission will consider, the regulation certainly does not and cannot impose determinative factors which would prohibit an FAC's authorization without a particular finding. Here again, the Commission should not be duped into believing it is hamstrung by a prescriptive list of determinative factors offered by opponents.

94. KCP&L's proposed FAC flows through the difference between the SPP IM costs and the generation costs of the Company. So an analysis of KCP&L's coal contracts or other fuel procurement strategies in isolation is inappropriate. The right analysis is of the market the Company sells its power into and purchases power out of. The SPP IM is not driven by the Company's coal contracts or other Company decisions. The SPP IM is largely driven by natural gas prices, which do reflect historic volatility. It is beyond question that KCP&L has no ability to manage or control the SPP IM which operates under principles far different from the last

century's utility ratemaking concepts which were developed before the advance of 21st century energy markets.

G. Transmission

95. It is not in doubt that KCP&L lacks control of SPP transmission charges. Nor is it contended that these costs are insignificant in magnitude relative to returns. It is argued that these transmission costs are not volatile, because the rapid cost increases are not unexpected or unknown. By that definition, neither the Great Depression, nor the more recent Great Recession, could be deemed an economically volatile period because the general direction of the economy was known. KCP&L offers a more rational definition of volatility: rapid variance in cost over time. In fact, KCP&L's witness Carlson provided projections showing significant uncertainty in SPP transmission costs. Exhibit 107, Carlson Rebuttal at 6-8.

96. As previously explained, KCP&L does, in fact, purchase all of its power out the SPP IM, which makes all of the transmission costs eligible to flow through the SPP IM. By FERC approved rates, every kWh of generation attracts a transmission charge. Thus Federal preemption does not permit the Commission to disallow these prudently incurred costs as part of the delivered cost of energy. While the Company is only asking for the netted difference between generation costs and the SPP IM cost for power, this self-imposed limitation should not prevent all transmission costs from flowing through the FAC.

97. This is especially true because these transmission costs produce savings for customers that are realized through the SPP IM. KCP&L pays for these transmission costs, including system upgrades and SPP administration fees, and customers benefit from reduced power costs in the SPP IM. See Ex. 104, Blunk Rebuttal at 12-16.

H. Conclusion

98. Load growth is flat, which translates into flat revenues. Average use per customer is flat or declining. Government mandates and other costs outside the control of the Company have put KCP&L in an increasing cost environment. KCP&L has proposed limited and pragmatic regulatory mechanisms that preserve the core regulatory framework of Missouri, but address the needs of the utility in a rapidly evolving operating environment while protecting customers from paying for higher than actual costs. The proposed mechanisms ensure the bi-lateral fairness reached by the Commission as to just and reasonable rates is not immediately rendered obsolete by economic forces outside the control of the Company when new rates take effect.

IV. FUEL ADJUSTMENT CLAUSE

A. Does KCP&L's FAC Request Violate the Stipulation and Agreement in Case No. EO-2005-0329? If so, Should it be Rejected?

99. The Parties disagree as to the effect in this case of language in the Proposed Experimental Regulatory Plan embodied in the Stipulation and Agreement filed in Case No. EO-2005-0329 on March 28, 2005, as amended on July 26, 2005.[19] The Commission approved the Stipulation And Agreement in its July 28, 2006 Report and Order. The language in the Experimental Regulatory Plan (CEP Stipulation) on which the Parties disagree follows:

> **III.B.1.c. Single-Issue Rate Mechanisms**
>
> KCPL agrees that, prior to June 1, 2015, it will not seek to utilize any mechanism authorized in current legislation known as "SB 179" or

[19] On March 28, 2005, KCP&L, Staff, the Office of the Public Counsel ("OPC"), Missouri Department of Natural Resources, Praxair, Inc., MIEC, Ford Motor Company, Aquila, Inc., The Empire District Electric Company, and the Missouri Joint Municipal Electric Utility Commission (the "Parties") submitted a Stipulation and Agreement in Case No. EO-2005-0329. That agreement included an Experimental Regulatory Plan. In its Report and Order issued on July 28, 2005, the Commission approved the Stipulation And Agreement ("CEP Stipulation").

> other change in state law that would allow riders or surcharges or changes in rates outside of a general rate case based upon a consideration of less than all relevant factors. (CEP Stipulation, p. 7, Case No. EO-2005-0329 (filed March 28, 2005, and amended by Comm'n Order on Aug. 23, 2005).

100. Staff, OPC and other parties argue that KCP&L is prohibited from filing tariffs at this time containing a FAC, whether or not the tariffs become effective, prior to June 1, 2015. These parties are arguing that "seek to utilize" means "to file" and thus, according to their argument, KCP&L is prohibited from filing a tariff sheet with an FAC prior to June 1, 2015. This argument reads words in the CEP Stipulation out of existence and should therefore be rejected.

1. Legal Standard For Evaluating the Language of a Stipulation and Agreement

101. In the Report and Order, In re Missouri Gas Energy's Gas Cost Adjustment, Case No. GR-96-450 (Mar. 22, 2002) the Commission explained the standards for evaluation of a Stipulation and Agreement as follows:

> The parties disagree about the interpretation of the stipulation and agreement that the Commission approved on June 11, 1996. That stipulation and agreement is, in essence, a settlement agreement by which certain parties paid large sums of money to settle certain claims. Normal rules of contract construction apply to interpretation of settlement agreements, so the Commission will look to the standards appropriate for interpreting a contract when interpreting the meaning of the stipulation and agreement. The Commission emphasizes that it is merely interpreting the stipulation and agreement as it would a contract. A stipulation and agreement between the parties that is accepted by the Commission does not prevent the Commission from performing its statutory duty to regulate the conduct of Missouri's public utilities.

102. The Missouri Supreme Court agreed with Commission holding in State ex rel. Riverside Pipeline Co. v. PSC, 215 S.W.3d 76, 84 (Mo. banc 2007), that a stipulation, like any other settlement agreement, must be construed using ordinary rules of contract construction. Andes v. Albano, 853 S.W.2d 936, 941 (Mo. banc 1993).

103. The first question the Commission must answer is whether or not there is an ambiguity in the language of the CEP Stipulation. "A contract is not ambiguous simply because parties disagree about its meaning." Erwin v. City of Palmyra, 119 S.W.3d 582, 584 (Mo. App. E.D. 2003). Ambiguity only resides where the disputed language has "more than one construction giving the words their plain and ordinary meaning as understood by a reasonable, average person." ATC Company, Inc. v. M. Myatt, 389 S.W.3d 732, 734 (Ct. App. E.D. 2013), quoting Klonoski v. Cardiovascular Consultants of Cape Girardeau, Inc., 171 S.W.3d 70, 73 (Mo. App. E.D. 2005). "Extrinsic evidence cannot be used to create an ambiguity, it must appear from the four corners of the contract itself." Id. The intent of the signatories must be gathered from it and it alone. Jake C. Byers, Inc. v. J.B.C. Investments, 834 S.W.2d 806 (Mo. App. E.D. 1992). "If there is no ambiguity, the court need not resort to construction of the contract, but rather the intent of the parties is determined from the four corners of the contract." Eisenberg v. Redd, 38 S.W.3d 409, 411 (Mo. banc 2001). Finally, a contract should not be interpreted in way which would render terms meaningless or "without function or sense." Dunn Indus. Group, Inc. v. City of Sugar Creek, 112 S.W.3d 421, 428 (Mo. banc 2003).

104. There is no ambiguity in the language "seek to utilize" in the CEP Stipulation. A reasonable and average person with a modicum of knowledge about Missouri utility law would understand this language within the context of a rate case. Within the context of a rate case the Company is prohibited from having an FAC tariff go into effect prior to June 1, 2015. It strains credulity for numerous reasons that a reasonable person would believe that "seek to utilize" entirely bars the Company from the filing of a tariff.

2. "Plain and Ordinary" Meaning and Consistency

105. This plain and ordinary meaning is confirmed by the Merriam-Webster online dictionary, which provides: "Seek" means "to try to get or achieve"[20] and "utilize" means to "use for a particular purpose."[21] Using these definitions the CEP Stipulation would read: "KCPL agrees that, prior to June 1, 2015, it will not ***try to use*** for a particular purpose any mechanism authorized in current legislation known as "SB 179" or other change in state law that would allow riders or surcharges or changes in rates outside of a general rate case based upon a consideration of less than all relevant factors."

106. Also, a logical analysis of the "four corners" of the CEP Stipulation points in favor of the Company's interpretation. If the Parties had intended to prohibit the Company from filing an FAC tariff they would have specifically stated that such a tariff could not be ***filed*** prior to June 1, 2015. Obviously, this would have been exceedingly easy to do.[22] The Staff/OPC/MECG argument asks the Commission to interpret "seek to utilize" to mean a specific and easily describable procedural act - to file. This defies logic and consistency both with the CEP Stipulation itself and Missouri utility law. It also renders the words "to utilize" without "function or sense." See Dunn Indus. Group, Inc., 112 S.W.3d at 428.

107. Using the plain and ordinary meaning of the words within the context of Missouri utility law means "seek to utilize" refers to the date that an FAC tariff becomes operative. In typical rate cases, the Commission suspends the proposed effective date of the tariff sheets for up to ten months to allow for additional review of the proposed rate increase or programs. The new

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[20] www.merriam-webster.com/dictionary/seek

[21] www.merriam-webster.com/dictionary/utilize

[22] In fact, so easy that the parties provided in the next sentence of the same section – "In exchange for this commitment, the Signatory Parties agree that if KCPL proposes an Interim Energy Charge ("IEC") ***in a general rate case filed before June 1, 2015***…" (Emphasis added.)

rates or programs may not be utilized until the Commission has finally approved the revised tariffs sheets with a specific effective date. The approved effective date of the tariff sheets determines the first day that the new rates and programs contained on those tariff sheets may be utilized by the public utility. With an understanding of the tariff process, it is clear that there is no violation of the language contained in the CEP Stipulation. Prior to June 1, 2015, KCP&L was not seeking to utilize the FAC mechanism at all because it anticipated a ***rate case***. KCP&L is seeking to utilize the FAC mechanism immediately upon approval of the FAC mechanism. The effective date of the FAC tariff is expected to be September 29, 2015, after the June 1, 2015 date.

3. Commission's Past Understanding of the Phrase

108. The Commission itself has recognized that public utilities "seek to utilize" programs according to an effective date on a tariff, not the filing of the tariff itself. In its Order Directing Notice And Establishing Time To Intervene In re Union Electric Company d/b/a Ameren Missouri's Filing to Change Criteria for Assessment of New Customer Deposits, Case No. GE-2014-0180 (issued on Dec. 9, 2013), the Commission looked to the date that Ameren Missouri's tariff would be effective as a condition for its ability "to utilize the prospective customer's credit score to determine whether a deposit should be required." Although Ameren Missouri filed its tariff on December 9, 2013, it would not be able to utilize the mechanism until the effective date of a Commission-approved tariff.

109. The opponent's argument is not only inconsistent with Missouri's tariff process, but also inconsistent with the CEP Stipulation itself. The CEP Stipulation specifically contemplated that KCP&L would file at least two and possibly four rate cases during the CEP term. In Section 3 of the CEP Stipulation, the Parties described the mechanics of the expected rate cases in detail. For example, for Rate Filing #1 (2006 Rate Case (Case No. ER-2006-0314)),

the CEP Stipulation stated: "Rate schedules with an effective date of January 1, 2007 will be filed with the Commission on February 1, 2006." By this language, the Parties specified that the Company would file tariffs on February 1, 2006, but that they would not become effective (and utilized) until January 1, 2007. Similar language was included in the CEP Stipulation of each of the subsequent rate cases, (Rate Cases #2, #3, and #4).

110. The Staff/OPC/MECG argument asks the Commission find the term ambiguous and to give it a meaning inconsistent and incongruent with both Missouri utility law and the CEP Stipulation itself, but further it asks the Commission to essentially find that KCP&L's counter-parties to the agreement were woefully unsophisticated with no knowledge of the tariff process. The reality is that Parties to the CEP Stipulation were not woefully unsophisticated and were well aware that tariffs implementing new rates and programs may not be utilized prior to the effective date of the approved tariffs. They also clearly understood that the Company would file the rate case tariffs prior to the effective date of the new rates and programs contained on the original tariffs. They also understood that the new rates would not be utilized until the effective date of a Commission approved tariff. They also fully understood that the Commission would review the proposed rates on the tariffs in each of the rate cases <u>prior</u> to the effective date of the approved tariffs. Similarly, the Parties to the CEP Stipulation understood that the Company would need to file tariffs proposing a rider or surcharge mechanism <u>prior</u> to June 1, 2015 if the Commission were to approve the rider mechanism to be utilized by June 1, 2015.

111. In the Commission's Report And Order approving the CEP Stipulation, the Commission described the agreement related to SB 179 mechanisms and other future mechanisms as follows:

> RIDERS AND SURCHARGES
> KCPL has agreed that before June 1, 2015, it will not seek to use any mechanism authorized in SB 179, enacted this year, or other change in state law that would allow riders or surcharges or changes in rates outside of a general rate case based upon a consideration of less than all relevant factors. (*emphasis added*)

112. This shows the Commission had the same understanding that KCP&L did of the meaning of the provision at issue in this case, to wit: The Company agreed it will not use any mechanism authorized in SB 179 or other change in state law that would allow riders or surcharges. Clearly, KCP&L cannot use an FAC mechanism until the Commission approves a tariff sheet that describes the use and parameters of the FAC mechanism. The tariff cannot be approved for use by the Company until the Commission approves a tariff authorizing it to be effective on a specified effective date. As a result, KCP&L may not "use" the FAC until that date.

4. Parties' Past Understanding of the Phrase

113. That the parties to the CEP Stipulation understood that the agreement not to use a rider was for a finite period, and not an indefinite period that could be expanded beyond the period ending June 1, 2015 is bolstered by testimony during the hearings in Case No. EO-2005-0329.

114. During cross-examination, OPC witness Russell Trippensee elaborated on his testimony.

> Q. Okay. Could you explain what Senate Bill 179 is and how that issue is treated in this agreement?
> A. Senate Bill 179 provides, I believe, for three separate provisions, two of which are what would be referred to as single-issue rate-making mechanisms dealing with environmental investments with fuel. And the third provision I believe deals with gas companies and the affect of weather on their revenues and a mechanism for mitigating the alleged effect of that. This agreement provides that Kansas City Power Light nor the parties will avail themselves of any single-issue mechanism for a period of approximately 10 years. (*emphasis added*) See Ex. 154, Case No. EO-2005-0329, Tr. pp. 766-767.

115. On page 57 of the CEP Stipulation, the Terms of the Agreement are specified as follows:

> 12. The Terms of this Agreement.
> The terms of this Agreement (once approved by the Commission) will be deemed to have become effective as of the date of the Order of the Commission approving this Agreement becomes final, and will expire June 1, 2010, except where otherwise specified in this Agreement.

116. The Order Approving Amendments To Experimental Regulatory Plan was effective on August 23, 2005. Mr. Trippensee's statement that the Company nor the parties "will avail themselves of any single-issue mechanism for a period of approximately 10 years" is consistent with the understanding that this provision would expire on June 1, 2015[23] (approximately ten years), and after that date the Company could avail itself of a single-issue mechanism such as a FAC or Missouri Energy Efficiency Investment Act ("MEEIA") surcharge. In order to "avail" itself of such a mechanism, the Company would require a tariff with an effective date on or after June 1, 2015. If the Company could not even file a tariff with a single-issue mechanism until June 1, 2015, it is likely that the Company would not be able to avail itself of the mechanism for 11 additional months, assuming the Commission suspended the tariffs for ten additional months, as is customary in rate proceedings. This interpretation would not be consistent with an agreement not to utilize a single-issue mechanism for "approximately 10 years." See Ex. 154, Case No. EO-2005-0329 portion of transcript at 766-67.

[23] In this regard it should be remembered that when the CEP Stipulation was originally filed on March 28, 2005, the signatories specifically requested that the Commission take action so that it could take effect on May 15, 2005. See, CEP Stipulation, page 57, para. 12 This fact supports the view that the CEP Stipulation was a ten-year agreement and, therefore, that KCP&L may implement an FAC after the conclusion of that ten-year period (i.e., on or after June 1, 2015).

5. Conclusion

117. The Commission should find that filing tariff sheets and utilizing tariff sheets are two different things. Accordingly, KCP&L was not prohibited from filing FAC tariff sheets prior to June 1, 2015, but rather was prohibited from using an FAC mechanism prior to June 1, 2015. Therefore KCP&L asks the Commission to find that KCP&L's FAC filing in this case is not in violation of the CEP Stipulation.

B. Has KCP&L Met the Criteria for the Commission to Authorize It to Have a FAC?

118. KCP&L has met the Commission's criteria of its regulations, as well as additional criteria or considerations relevant to the approval of an FAC. The regulations state that the Commission must consider (1) the magnitude of the costs, (2) the ability of KCP&L to manage the costs, and (3) the volatility of the costs. See 4 CSR 240-20.090(2)(C); Ex. 200, Staff Report at 197-98.

119. Staff witness Dana Eaves agreed that KCP&L had demonstrated that the costs of the items the Company seeks to include in the FAC "are of such magnitude they would materially impact the utility." Id. at 197:3 (original emphasis). Mr. Eaves agreed that other appropriate considerations for the Commission regarding the approval of an FAC would be whether it was designed to provide the utility with a sufficient opportunity to earn a fair ROE, whether it was experiencing significant regulatory lag, and whether its financial integrity would be maintained and confidence in that financial integrity assured. See Tr. 1660-63. These financial criteria were not included in Staff's analysis.

120. While OPC witness Lena Mantle and the Industrials' Michael Brosch disagree with the significance of the magnitude of fuel cost volatility based on incorrect definitions of significance, the Staff Report notes the significant amount of coal and nuclear fuel costs, which

account for a significant portion of KCP&L's operating revenue. See Ex. 200, Staff Report at 197. Company witness Wm. Edward Blunk detailed the exposure of KCP&L in coal price risk alone, which over a four-year period of 2015 through 2018 exceeds $200 million. See Ex. 103, Blunk Direct at 22. He responded to the testimony of Ms. Mantle and Mr. Brosch, noting that they offered no significant criticism of the magnitude factor, but focused attention on volatility and control. See Ex. 104, Blunk Rebuttal at 20. Ms. Mantle did not address the preliminary criteria in the Commission's regulations, but rather proposes new criteria. See Ex. 309, Mantle Direct at 17.

121. Regarding the ability to manage costs, Staff conceded that the price of coal (KCP&L's major fuel source) is "established by national or international markets." See Ex. 200, Staff Report at 197:19-20. Mr. Eaves had no basis to disagree with Mr. Blunk's testimony that between February 2013 and July 2014, freight costs to transport Powder River Basin ("PRB") coal to the Company's plants saw a 15% drop in mid-2013, and a 15% increase from the fall of 2013 to the summer of 2014. See Tr. 1665. Additionally, while coal freight rates change quarterly, the price of coal changes monthly. See Ex. 104, Blunk Rebuttal at 24-26; Tr. 1666 (Eaves: no basis to dispute). This is significant since only about 20% of KCP&L's coal requirements for the next four years are under contract currently. See Ex. 104, Blunk Rebuttal at 9:17-18. Staff's observation that KCP&L "clearly cannot control the commodity markets in which it must purchase its fuel" leads to the conclusion that KCP&L has only a limited ability to manage its fuel costs. See Ex. 200, Staff Report at 197:24-25.

122. KCP&L has employed hedging strategies to manage the cost of coal, which Mr. Eaves stated was done in an effort to mitigate the volatility of coal's market price. See Tr. 1668-69. He testified that KCP&L's hedging strategies "provide great value" to offset the price of

coal, natural gas and fuel oil, but agreed that this "is different than the ability to control the cost of a commodity," which is volatile. Id. at 1669-71.

123. The Commission's regulations at 4 CSR 240-20.090(2)(C) state that it must consider "the volatility of the cost component" included in any rate adjustment mechanism like an FAC. The term "volatility" is not defined in the Commission's regulations. However, reference to standard dictionaries and other works show that "volatility" or "volatile" does not necessarily mean extreme or violent changes, but includes changes that are variable, transitory or uncertain, with no predictable pattern. See Merriam-Webster's Collegiate Dictionary at 1319 (10th ed. 2000) ("rapid or unexpected change"; "transitory); Roget's II, The New Thesaurus at 1113 (3d ed. 1995) ("changeable," "uncertain," "uncertain," "unpredictable").

124. This is consistent with Section 386.266.1 which states that "periodic rate adjustments outside of general rate proceedings" are "to reflect increases and decreases" in prudently incurred fuel and purchased-power costs, including transportation. There is no mention of highly volatile or extreme changes.

125. Regarding the volatility of fuel costs, Mr. Blunk reviewed the fluctuations in PRB coal prices, which in recent years doubled from $0.40/MMBtu in June 2012 to $0.76/MMBtu in April 2014, and thereafter dropped in the next few months to $0.63/MMBtu. See Ex. 103, Blunk Direct at 22:5-8. Natural gas has similarly been a volatile commodity. Id. at 21-22.

126. Mr. Blunk explained that KCP&L's net energy costs, calculated with reference to FERC Form 1 data, indicated that the Company's net energy costs were more volatile than 13 of the 14 companies in the proxy group used in the cost of capital analysis. See Ex. 104, Blunk Rebuttal at 21-23. Moreover, contrary to Mr. Brosch's testimony, KCP&L's net energy costs for

2006-2013 were more volatile that Missouri's three other electric utilities which all have FACs. Id. at 24.

127. Given the testimony of Company witnesses Rush, Blunk and Crawford, most of which was undisputed, there is no question that KCP&L has met the criteria for the Commission to authorize an FAC both under Section 386.266, as well as 4 CSR 240-20.090(2)(C).

C. Should the Commission Authorize KCP&L to Have a FAC?

128. Yes. As discussed above, KCP&L has met not only the Commission's considerations of magnitude, manageability and volatility with regard to fuel costs and related expenses, but has demonstrated that for the past several years the Company has not had a reasonable opportunity to earn its authorized rate of return. See Ex. 114, Heidtbrink Direct at 15; Ex. 118, Ives Direct at 7; Ex. 120, Ives Rebuttal at 10-13; Ex. 134, Rush Direct at 12.

129. Section 386.266.4 provides that an FAC or other rate adjustment mechanism ("RAM") must be "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity." Accord, 4 CSR 240-20.090(2)(A). The FAC proposed by KCP&L will provide the Company with this opportunity, and move it to a position of equal standing with all of the other electric public utilities in Missouri who have been authorized to utilize FACs. See Ex. 134, Rush Direct at 9.

130. KCP&L has provided the relevant information required by Commission Rules 4 CSR 240-3.161 and 4 CSR 240-20.090. See Ex. 134, Rush Direct at 9 & Sch. TMR-2 through TMR-4. See also Ex. 103, Blunk Direct at 20–34; Ex. 109, Crawford Direct at 2–13; Ex. 115, Hevert Direct at 36-38.

131. Staff has reviewed and analyzed the requirements of the Commission's regulations regarding KCP&L's request, and concluded that the Company "has complied with

the filing requirements contained” in those regulations. See Ex. 200, Staff Report at 200:10–13. Mr. Eaves confirmed this during the evidentiary hearing. See Tr. 1696-97.

D. If the Commission Authorizes KCP&L to Have a FAC, How Should it be Structured?

1. What Percentage (Customers/Company) of Changes in Costs and Revenues Should the Commission Find Appropriate to Flow Through the FAC?

132. KCP&L proposes that the FAC should be structured so that 100% of the cost decreases are passed through to customers, as well as 100% of any cost increases. The vast majority of FACs in place for electric utilities in this region reconcile recovery at 100%. Because KCP&L competes for capital with these utilities, it would be at a disadvantage if its recovery under an FAC were limited to 95%, as proposed by Staff, or 50%, as proposed by OPC. See Ex. 134, Rush Direct at 26; Ex. 135, Rush Rebuttal at 13, 22–24.

133. A 100% reconciliation would provide customers with all of the benefits of any decrease in fuel costs, as well as provide the Company with the recovery of any additional costs. This is fair to both KCP&L and customers since fuel costs are not controlled by either of them. While Staff’s proposal of a 95/5 allocation method reflects the FACs approved for other Missouri electric utilities, OPC’s 50/50 allocation proposal is an extreme departure from even that mechanism. As noted above the 95/5 split is nothing more than a prohibited disallowance of prudently incurred costs when fuel costs are above the historic test year estimate and an unjust enrichment of the utility when the costs are below the historic test year estimate.

134. OPC witness Lena Mantle acknowledged that there are no utilities in the United States today which have such a 50/50 allocation. See Tr. 1731-32. She also acknowledged that prudence reviews occur after all rate adjustments under an FAC, that the utility is only permitted to recover prudently incurred costs, and that there have been only two findings of imprudence

since the enactment of Section 386.266 in 2005. See Tr. 1733. She testified that if the prudence review determines that costs were imprudently incurred, they are refunded to customers at the utility's short-term borrowing rate. See Tr. 1732-33; § 386.266.4(4). The Commission's own regulations provide further details on how the audits are to be conducted by Staff, pursuant to 4 CSR 240-20.090(7).

135. Given that customers would receive 100% of any decrease in fuel, purchased power and transportation costs, which is the process that is followed under traditional ratemaking, KCP&L's proposal is fair and should be accepted.

136. Given the requirement that FAC-related costs undergo periodic prudence review, there is no basis for imposing an arbitrary 5% disallowance (or 5% windfall). As an alternative, if the Commission chooses to adopt the 95/5 convention, it would be more reasonable to defer the 5% of cost increases not recovered through the operation of the FAC and allow the Company to recover those costs assuming no prudence disallowance is adopted by final order of the Commission. This provision would also flow 100% of cost reductions through to the benefit of customers. See Ex. 136, Rush Surrebuttal at 3.

2. Should the Costs and Revenues That Are to be Included in the FAC be Approved by the Commission and Explicitly Identified Along with the FERC account, Subaccount and the Resource Code in Which KCP&L will Record the Actual Cost/Revenue? If so, What Costs and Revenues Should be Included and What are Their Corresponding FERC Accounts, Subaccounts and Resource Codes?

137. The accounts and their corresponding numbers as set forth by FERC in the Uniform System of Accounts ("USOA") sufficiently identify the costs that will be subject to the FAC. There is no need for a requirement of any non-USOA subaccounts or resource codes that are used in KCP&L's corporate accounting system. See Ex. 135, Rush Rebuttal at 25–26.

138. OPC witness Mantle requests that KCP&L's resource codes and department codes be included in the FAC. See Ex. 309, Mantle Direct at 30; Ex. 311, Mantle Surrebuttal at 25–26. Ms. Mantle claims that the Company's proposal to use the FERC USOA account numbers is insufficient, and that KCP&L Assistant Controller Ryan Bresette "proposes that 'just words' be used to identify the cost to be included." Id. at 26:13.

139. To the contrary, Mr. Bresette did not use the phrase "just words," but rather endorsed the use of the FERC account numbers and "[u]sing words to describe what is included or excluded from the FERC account definition in a manner consistent with the Company's proposed FAC [which] allows the Company to manage its business while giving the Commission and our customers assurance about what is or is not in the FAC. See Ex. 105, Bresette Rebuttal at 13–14.

140. Use of the FERC USOA account numbers would permit the FAC to be administered and audited like the FACs used by all other Missouri electric utilities. See Ex. 135, Rush Rebuttal at 25–26; Ex. 105, Bresette Rebuttal at 13. No other party proposes the use of corporate resource, accounting or department codes in KCP&L's FAC. OPC's recommendation should be rejected.

3. Should the FAC Tariff Sheets Reflect the Accounts, Subaccounts, Resource Codes, and the Cost/Revenue Description?

141. As discussed above, the Company's FAC tariff sheets need only reflect the accounts and their corresponding numbers as set forth in the USOA, along with an appropriate description of the item. There is no need to burden the administration of the FAC with additional subaccounts or corporate accounting resource codes. Such a level of detail is not required by the Commission's regulations in 4 CSR 240-20.090 or the more detailed provisions at 4 CSR 240-3.161(5)-(8) and its pro forma financial surveillance monitoring report forms.

4. Should SPP and Other Regional Transmission Organization/Independent System Operator Transmission Fees be Included in the FAC, and at What Level?

142. All fees charged by SPP that are charged to KCP&L pursuant to SPP Schedules 1, 1-A, 11 and 12 should be included at a level of 100% in the FAC. KCP&L's membership in SPP was approved by this Commission.[24] As a member of SPP, KCP&L has no choice whether to pay these charges. See Ex. 135, Rush Rebuttal at 13–14; Ex. 107, Carlson Rebuttal at 14. As described by KCP&L witness John Carlson, KCP&L has a limited ability to influence SPP costs, even though it is an active transmission owner of the regional transmission organization ("RTO"). Id. at 4–5. He explained that while KCP&L and other transmission owners have the ability to vote against proposed cost increases by SPP, it is not always successful, noting how the costs of projects included within the High Priority Incremental Load Study were passed onto KCP&L, although it was only an indirect beneficiary. Id.

143. These costs are charged under these SPP schedules, including Schedule 11 which collects the costs related to the construction of new transmission projects.[25] These costs are volatile and mounting. Since 2011 when transmission project costs were $6.46 million, they have risen to $16.78 million in 2013 and $24.48 million in 2014. See Ex. 107, Carlson Rebuttal at 8. For 2015 these costs are expected to increase an additional $10 million and in 2017 to $42.8 million. Id.

144. These costs are far more significant and volatile for KCP&L than the corresponding Midcontinent Independent System Operator (MISO) transmission charges incurred by Ameren Missouri. See Ex. 108, Carlson Surrebuttal at 6–7. Although MIEC and

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[24] Order Approving Stipulation and Agreement, In re Kansas City Power & Light Co. Case No. EO-2006-0142 (June 13, 2006), as modified, Amended Order Approving Stipulation and Agreement (July 13, 2006).

[25] See Ex. 157, SPP Sch. 11.

OPC witness James Dauphinais did not find Mr. Carlson's testimony persuasive, he invited the Commission to refer to Mr. Rush's Schedule TMR-5, attached to his Direct Testimony (Ex. 134).

145. Mr. Rush's schedule fully supports the Company's contention that transmission costs are to continue rising until 2022. Combining Mr. Carlson's more recent testimony regarding the volatility of the costs and Mr. Rush's chart regarding the magnitude of those transmission costs proves KCP&L's point that SPP's Schedule 11 charges are appropriate for inclusion in the FAC.

146. SPP charges under Schedule 1 relate to Scheduling, System Control and Dispatch Service. See Ex. 155, SPP Schedule 1. All of these costs are charged to FERC Account Number 561.4. See Ex. 159, USOA References. Staff expressed no opposition to the collection in an FAC (or a tracker, if an FAC were not approved) of Schedule 1 charges because they relate to KCP&L's need "to buy and sell energy to meet the needs of its customers." See Ex. 208, Eaves Rebuttal at 9:15–16; Tr. 1681. No other witness opposed the collection of Schedule 1 charges in an FAC (or a tracker) if granted by the Commission. Because charges under Schedule 1 are required to be paid in order for KCP&L to move power through, out of, or within the SPP Balancing Authority area, they should be included in an FAC.

147. As discussed above, it is KCP&L's position that all SPP charges, including those related to the IM, are appropriate for recovery in an FAC. Specifically, Mr. Eaves' modification to the tariff, as contained in Schedule DEE-1, erroneously eliminated FERC Accounts 561.4, 561.8, 565, 575.7 and 928 relating to transmission costs that should be included in an FAC.

148. Moreover, he erroneously modified Account 456.1 to state simply "456." Account 456.1 specifically relates to "Revenues from transmission of electricity of others" including revenues related to the RTO.

149. Charges under Schedule 11 relate to SPP's transmission projects which are allocated both zonally and regionally, depending on the nature of the project. See Ex. 157, SPP Sch. 11. KCP&L is charged by SPP on a load-ratio share basis, so it bears approximately 8.0% of the regionally allocated charges, in addition to any charges directly allocated to the KCP&L zone. See Ex. 107, Carlson Rebuttal at 3. As noted above, Mr. Carlson explained how these charges are expected to continue to rise significantly through the next decade. Charges relating to such projects are assessed to KCP&L under FERC Account 565, while any revenues derived from such transmission projects are allocated to KCP&L in FERC Account 456.1. See Ex. 159, USOA References.

150. As both Mr. Carlson and Mr. Bresette testified, these charges are significant and relate to the purchase of power, including its transportation via transmission service. See Ex. 107, Carlson Rebuttal at 12-13; Ex. 108, Carlson Surrebuttal at 5, 7; Ex. 106, Bresette Surrebuttal at 1–3. Therefore all Schedule 11 charges are appropriate for inclusion in an FAC.

5. Should SPP and FERC Administrative Fees (SPP Schedule 1-A and 12) be Included in the FAC?

151. SPP Schedule 1-A relates to Tariff Administration Service provided by the RTO. See Ex. 156, SPP Schedule 1-A. Charges from this schedule are allocated to three FERC accounts: (1) Account 561.4 (scheduling, system control & dispatching services); (2) Account 561.8 (reliability planning & standards development services); and (3) Account 575.7 (market administration, monitoring & compliance services).

152. The SPP tariff requires all transmission customers like KCP&L to purchase this service from SPP, which is assessed on all Point-to-Point and Network Integration Transmission Service. See Ex. 106, Bresette Surrebuttal at 6. Fees charged under Schedule 1-A directly relate to KCP&L serving its load, as well as selling power off-system. See Ex. 107, Carlson Rebuttal

at 10. It is therefore an energy-based charge related to the transmission of purchased power, and is appropriately included in an FAC.

153. Finally, the amounts assessed by SPP under Schedule 12 relate to an assessment by FERC. Because this assessment relates entirely to KCP&L's membership in SPP and its participation in the IM and the other services that it takes from SPP, it is appropriate for inclusion in the FAC.

6. Should All Realized Gains and Losses from KCP&L's Hedging and/or Cross Hedging Practices be Included in the FAC?

154. All realized gains and losses from KCP&L's hedging practices should be included in the FAC. Mr. Blunk explained in detail KCP&L's hedging strategy for both coal and natural gas. See Ex. 103, Blunk Direct at 24–32. He testified that the hedging programs for both of these fuels had helped to avoid much of the volatility in the coal market, as well as exposure to natural gas market price risk. Id. at 25, 31.

155. Staff expressed no objection to hedging costs related to coal, or natural gas, with the exception of costs to cross-hedging power transactions with natural gas. See Ex. 202, Staff Report (Rate Design) at 39. Staff's explanation was that since the Company is not currently utilizing cross-hedging, it should not be included as a cost item in the FAC. Id.

156. Responding to this criticism, Mr. Blunk stated that since cross-hedges are "the best means for hedging power purchases or sales," if its costs were excluded from the FAC, KCP&L would not hedge power purchases or sales. See Ex. 104, Blunk Rebuttal at 34. In response to Staff and Commissioner questions, Mr. Blunk explained that cross-hedging has been used by KCP&L to achieve a balance in its hedging programs, and that if cross-hedging were prohibited, it would create an imbalanced portfolio that would lead to volatility and likely result in costs and other detriments to both the Company and customers. See Tr. 1601-02, 1609-11.

Whether or not KCP&L is currently using cross-hedging, it should remain as a tool to be employed as part of a balanced hedging program when necessary to achieve its purposes of mitigating coincident risks, as Mr. Blunk explained. See Tr. 1613-14.

7. Should SO_2 Amortizations, Bio Fuels, Propane, Accessorial Charges, and Broker Commissions, Fees and Margins be Included in the FAC?

157. All of these charges are properly included in the FAC, as Mr. Blunk explained in response to Staff's questions. Accessorial charges are a necessary part of transporting coal by rail, including switching, and the release and pick-up of locomotive power. See Ex. 104, Blunk Rebuttal at 34. The railroads themselves have coined this term, which is used in their tariffs. Id. Adopting the railroads' language, KCP&L decided to use the term "accessorial charges" to refer to these costs. Id. They will, therefore, be subject to audit by Staff within this category, which does not have unique account numbers nor specific resource codes.

158. The language in the FAC tariff will specifically refer to railroad accessorial charges, which will be subject to a workable administrative process, as well as audits conducted by Staff. Id. KCP&L has no objection to Mr. Eaves' suggestion that accessorial charges be defined in the FAC tariff, as discussed above.

159. Regarding OPC's argument that SO_2 amortizations should not be included in the FAC, the Company believes that they should be included as they are collected in FERC Account 509, which specifically includes "the cost of allowances expensed concurrent with the monthly emission of sulfur dioxide." See Ex. 135, Rush Rebuttal at 26; 18 C.F.R., Part 101, USOA § 509, Allowances.

8. Should the FAC Include Costs and Revenues that KCP&L is Not Currently Incurring or Receiving, Other than Insurance Recoveries, Subrogation Recoveries and Settlement Proceeds Related to Costs and Revenues Included in the FAC?

160. The FAC should include all costs and revenues relating to net fuel and purchased power costs, whether they are being incurred at this time or in the future. The Commission should take a balanced approach with regard to what is included in the FAC, and should specifically allow unknown and unanticipated items like insurance recoveries and settlement proceeds (both expenses and revenues). See Ex. 104, Blunk Rebuttal at 11. As Mr. Blunk noted, OPC's initial proposal to include only the revenues derived from such unknown activities in the FAC, yet exclude the cost to achieve such revenues, creates a result that would be clearly unfair. Id. Recognizing this basic unfairness, Ms. Mantle agreed in her surrebuttal that both recoveries and expenses for such unanticipated events or activities be considered. See Ex. 311, Mantle Surrebuttal at 29–30.

9. Does the FAC Need to Have Exclusionary Language added to Insure that North American Electric Reliability Corporation ("NERC") and FERC Penalties Are Not Included?

161. KCP&L believes that is unnecessary to state whether penalties of this nature should be excluded from the FAC since the FERC USOA provides guidance that such charges would be appropriately recorded in account 557. Further account 557 is not includible in the FAC so there could not be recovery of such penalties in the FAC. See Ex. 135, Rush Rebuttal at 18–19.

10. Should the Phrase "Miscellaneous SPP IM Charges, Including But Not Limited To," Be Included in KCP&L's FAC tariff?

162. The SPP IM market charge types may change as directed by SPP. These charges will be appropriately included in accounts 447 or 555 as appropriate and thus should be included

in the calculation of the FAC. Without the wording indicated above, those charges could be excluded from the FAC.

163. The original language proposed by the Company should be contained in any FAC approved by the Commission.

11. How Should Off-System Sales Revenue be Defined?

164. Revenue from off-system sales should be defined in the FAC to include all sales reflected in FERC Account 447 (Sales for Resale), The only item that would not be included in Account 447 revenues would be sales in 447.1-- sales to municipalities.

165. All energy transactions of KCP&L are recorded either as generator settlements to Account 447 or as load settlements recorded to Account 555. See Ex. 106, Bresette Surrebuttal at 3:16–19. Account 555 regarding purchased power states in subparagraph A: "This account shall include the cost at point of receipt by the utility of electricity purchased for resale." See Ex. 159, USOA References at 3 (p. 491). Similarly, Account 447 states in its subparagraph A: "This account shall include the net billing for electricity supplied to other electric utilities or to public authorities for resale purposes."[26] These two accounts therefore collect all of the purchases and sales that KCP&L makes in the SPP IM.

166. It is undisputed that on a daily basis KCP&L sells all of its generated power into the SPP market and purchases from SPP 100% of the power it sells to its retail customers. See Ex. 107, Carlson Rebuttal at 9:7–12. This means that the price of power that is sold to SPP is calculated at the generator settlement location at the time that it is sold. Similarly, at the time that load is purchased from SPP at a load settlement location, its price is different from that at the generator location. See Ex. 106, Bresette Surrebuttal at 2:17–20.

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[26] As noted above and in KCP&L's Position Statement, the Company seeks to account for all revenues related to the SPP IM, excluding sales for resale to private utilities or municipalities.

167. Although there is a settlement process that nets both sales and purchases, as required by FERC Order 668, each transaction continues to be recorded in Accounts 447 and 555. Id. at 3–4. Each transaction for a specific billing period is reflected in the invoices received by KCP&L from SPP. These invoices are a seven-day billing period which KCP&L receives on an weekly basis. Notably, the FERC Order 668 netting only occurs at the end of the month for the purpose of closing the accounting period. Id. at 4.

168. It is therefore clear that KCP&L pays SPP for all of its purchases and, in return, receives payments from SPP for all of its sales. These are costs incurred to purchase power, including its transmission ("transportation" under Section 386.266.1), and are properly recoverable in an FAC. In re Union Elec. Co., 422 S.W.3d 358, 366-67 (Mo. App. W.D. 2013). As a result, all of the SPP IM charges and credits, except as noted above, should be included in the definition of Off-System Sales Revenue.

12. How Should the "J" Component (i.e., Net System Input) be Defined for KCP&L's Operations?

169. The "J" component refers to the definition of KCP&L's jurisdictional allocation calculation. To be consistent with how costs are allocated between the Missouri and Kansas jurisdiction's in this rate case, the J calculation should be as follows: J = Missouri Retail Energy Ration = Missouri Retail kWh Sales/Total Retail kWh Sales (Kansas and Missouri) + Sales for Resale (Account 447.1 - Municipals). See Ex. 135, Rush Rebuttal at 20.

13. Should the Rate Schedules Implementing the FAC Have an Amount for the Base Factor When the Commission Initially Approves Them, or Not Until After the End of the First FAC Accumulation Period?

170. Since base rates are being set in this case, the original tariff calculation sheet should contain all zeros until the first accumulation period has been concluded under the FAC. See Ex. 135, Rush Rebuttal at 20:18–20.

14. How Many Different Voltage Levels of Service Should be Recognized for Purposes of Applying Loss Factors?

171. The two voltage levels identified in KCP&L's proposed FAC are sufficient to appropriately distinguish this cost recovery. See Ex. 135, Rush Rebuttal at 21:1–5. The proposal of MIEC witness Brubaker on page 35 of his rate design Direct Testimony (Ex. 554) should be rejected.

15. What are the Appropriate Recovery Periods and Corresponding Accumulation Periods for the FAC?

172. As proposed by KCP&L, the recovery periods should run from October through December, and from April through March. The corresponding accumulation periods that OPC proposes be changed to January through June and to July through December are acceptable to the Company. See Ex. 135, Rush Rebuttal at 27:3–8.

16. Should FAC Costs and Revenues be Allocated in the Accumulation Period's Actual Net Energy Cost in a Manner Consistent With the Allocation Methodology Utilized to Set Permanent Rates in this Case?

173. KCP&L generally agrees that costs and revenues should be allocated consistently with the allocation methodology used to set permanent rates in this case. Although a minor change is needed to the wording associated with the jurisdictional allocation (as noted above in response to Subsection D(12), KCP&L does agree that costs and revenues should be allocated consistent with the allocation methodology. See Ex. 135, Rush Rebuttal at 26–27.

E. If the Commission Authorizes KCP&L to Have a FAC, What FAC-related Reporting Requirements Should it Order KCP&L to Comply with?

174. Staff has proposed what appear to be nine reporting requirements if the Commission grants the Company an FAC. See Ex. 202, Staff Report (Rate Design) at 42-43. KCP&L already provides a significant amount of information to Staff on a regular basis, which it will continue to do. However, it opposes any FAC reporting requirements that expand what the

Company's sister company KCP&L Greater Missouri Operations Company ("GMO") currently provides to Staff. See Ex. 135, Rush Rebuttal at 16.

175. Staff's ninth request is for a "monthly as-burned fuel report." See Ex. 202, Staff Report (Rate Design) at 43:16-20. KCP&L is willing to work with Staff to provide this information requested by Staff. See Ex. 135, Rush Rebuttal at 17.

F. If the Commission Authorizes KCP&L to have a FAC, should KCP&L be Allowed to Add Cost and Revenue Types to Its FAC Between Rate Cases?

176. KCP&L should be allowed to add revenue and cost types to the FAC between rate cases, consistent with recording those costs and expenses in the various accounts set forth in the FERC USOA. See Ex. 135, Rush Rebuttal at 26.

G. If the Commission Authorizes KCP&L to have a FAC, Should KCP&L be Required to Clearly Differentiate Itself from GMO on Customer Bills?

177. The Commission has already decided this issue, and the Company has acted in reliance on this Commission decision since it was made. In Case No. EC-2009-0430, a complaint brought by Staff arguing that use of the same KCP&L logo on the bills and service truck of both KCPL and KCPL-GMO was confusing to customers. The Commission ruled against Staff, noting that ". . . Staff did not present sufficient evidence to establish that use of the KCP&L brand by KCPL and KCPL-GMO has caused significant confusion among the customers of those companies." Order Granting Motion For Summary Determination and Dismissing Complaint, Case No. EC-2009-0430, p. 9, issued December 23, 2009.

178. Beyond information already contained in customer bills, there is no need for KCP&L to be further differentiated from GMO on the customer bills. Both companies provide accurate information on a regular basis to make customers aware of the specific tariffs under which they are taking service. See Ex. 135, Rush Rebuttal at 16. The Company is not aware of any issues or problems regarding the information that KCP&L currently provides. As Mr. Rush

testified at the evidentiary hearing, while "KCP&L" is used as the brand name for both the Company and for GMO, it is careful to work with customers to explain the difference between the companies and avoid any confusion. See Tr. 1632-33, 1636-39. As such, there is no need for the Commission to do anything different in this proceeding than has already been decided in Case No. EC-2009-0430.

V. TRANSMISSION FEES EXPENSE

A. What Level of Transmission Fee Expenses Should the Commission Recognize in KCP&L's Revenue Requirement?

179. The annualized SPP transmission fee expenses at the end of the true-up period ending May 31, 2015 plus the impact of Independence Power & Light's membership in SPP as a transmission owner should be recognized and included in the FAC. If these fees are not included in the FAC, they should be subject to a tracker, with incremental changes treated as regulatory assets or liabilities under Accounts 182.3 (other regulatory assets) and 254 (other regulatory liabilities) under the FERC USOA. See Ex. 160, 18 C.F.R. Part 201, pp. 653, 663 and 609.

180. If SPP transmission fees are not included in either the FAC or a tracker, $5 million of annual forecast SPP transmission fees expense (Missouri jurisdictional) should be added to the revenue requirement above the base amount of SPP transmission fees (Missouri jurisdictional). If the forecast amount recognized in the revenue requirement exceeds actual SPP transmission fee expenses during the period that rates are in effect, such amount should be credited to customers in the next general rate case. If actual transmission expenses exceed the rate allowance, the Company would absorb that amount as a reduction in earnings. This approach is similar to the IEC used for some companies in the early 2000's and is also similar to the forecasted fuel methodology used by the Commission in the early 1980's. See Ex. 135, Rush

Surrebuttal, pp. 23-24; and Ex. 150, Case No. ER-82-66 Report and Order and Ex. 151, Case No. ER-83-49 Report and Order.

B. Should a Tracker be Implemented for KCP&L's Future Transmission Fee Expenses that Varies from the Level of Transmission Fees Expense the Commission Recognizes in KCP&L's Revenue Requirement and that KCP&L will not Recover Through a FAC?

181. Yes, such a tracker should be granted for SPP transmission fee expenses because they meet the general criteria discussed during the evidentiary hearing that the size of such expenses are significant, they are generally beyond the control of management, and in the near future such expenses will continue to increase in large amounts.

182. As discussed above in Section IV(D)(4), all of the fees charged by SPP under Schedules 1, 1-A, 11, and 12 are appropriate for inclusion in either an FAC or a tracker. The costs charged under Schedule 11 which relate to transmission system upgrades are especially appropriate. Schedule 11 charges recover the significant costs associated with constructing new high-voltage transmission projects and other system upgrades. See Ex. 107, Carlson Rebuttal at 3. These costs are allocated both zonally and regionally, depending on the voltage level of the transmission facility. Id.; Ex. 157, SPP Sch. 11.

183. Schedule 11 costs are charged to SPP's Network and Point-to-Point transmission customers based on revenue requirement amounts approved by FERC and the magnitude of load associated with each customer's transmission service. See Ex. 107, Carlson Rebuttal at 3. The total zonal and regional rate equal the total rate for a transmission customer under the SPP tariff. KCP&L's load ratio share is approximately 8.0%, so it bears about 8.0% of the regionally allocated costs, in addition to its zonal costs. Id.

184. KCP&L's Schedule 11 transmission upgrade costs have increased significantly from $16.78 million in 2013 and $24.48 million in 2014 to an estimated $34 million in 2015. They are projected to reach $37.5 million in 2016 and $42.87 million in 2017. Id. at 8.

185. This is consistent with the total amount of Account 565 charges where KCP&L's SPP transmission expenses are recorded. As Mr. Carlson testified, the Company's costs in this account have risen far more dramatically than Ameren Missouri's costs. See Ex. 108, Carlson Surrebuttal at 6-7. The Company's Account 565 expenses were $37.31 million in 2013 and $47.17 million in 2014. In 2015 these expenses are estimated to reach $59 million, and will exceed $69 million in 2016 and 2017. Id.

186. MIEC and OPC witness James Dauphinais found Mr. Carlson's figures to be unpersuasive, finding the overall SPP base plan funding cost chart provided by Mr. Rush in Schedule TMR-5 of his Direct Testimony to be more persuasive. See Tr. 1767-69. Mr. Rush's Schedule TMR-5 was included in his Direct Testimony when this case was filed on October 30, 2014. See Ex. 134, Rush Direct at 20 & Sch. TMR-5.

187. Mr. Carlson's updated figures presented in his rebuttal and surrebuttal testimony provide additional and supportive testimony. As Mr. Rush's Schedule TMR-5 indicates, SPP's expenses will continue to increase and not begin to subside for KCP&L until 2023. While Mr. Dauphinais properly endorsed this chart, he erroneously stated that the Company's costs begin to level off in 2019-20. See Tr. 1768-69. Given this clear and uncontested rise in costs for at least the next seven years, tracker treatment is appropriate.

188. Because there is no historical date on which to base these unprecedented transmission upgrades, and because it is difficult to predict exactly the level of cost that will be incurred, it is appropriate for the Commission to grant tracker treatment to these expenses.

Contrary to the suggestion by several parties, a tracker has no rate making effect and does not guarantee recovery. As the definitions of regulatory assets and liabilities make clear (Ex. 160, 18 C.F.R. Part 201, pp. 653, 663 and 609), such costs are simply deferred to the balance sheet pursuant to a Commission order and are not recorded on the income statement.

189. As has occurred with other trackers granted by the Commission for pensions, other post-employment benefits, and new plant O&M, recognition of these expenses is deferred until a decision regarding recovery that occurs in the next general rate case. This would be consistent with the process followed in the Commission's vegetation management rule, 4 C.S.R. 240-23.030(10).

1. Should KCP&L Get a Return On, as well as Return Of the Tracked Amounts?

190. Yes, a return on as well as a return of the tracked amounts, whether a regulatory asset or a regulatory liability, should occur. Such a finding is consistent with the Commission's decision to allow a utility a return of as well, as a return on deferred unamortized costs related to generation station upgrades. State ex rel. Aquila, Inc. v. PSC, 326 S.W.3d 20, 27-31 (Mo. App. W.D. 2010) (affirming Commission decision granting such rate base treatment for Sibley improvements).

2. Should KCP&L Get Carrying Costs on the Tracked Amounts?

191. While a discussion of carrying costs, amortization and recovery is premature given that a tracker mechanism is in no way a guaranteed recovery, yes, it is appropriate for KCP&L to receive or pay carrying costs on the tracked amounts, whether reported as regulatory assets or liabilities. The carrying costs represents the time-value of money which is the essential problem with regulatory lag for both the utility and costumers.

VI. PROPERTY TAX EXPENSE

A. What Level of Property Tax Expense Should the Commission Recognize in KCP&L's Revenue Requirement?

B. Should a Tracker be Implemented for KCP&L's Property Tax Expense that Varies from the Level of Property Tax Expense the Commission Recognizes in KCP&L's Revenue Requirement?

1. Should KCP&L Get a Return On, as well as Return Of the Tracked Amounts?

Yes.

2. Should KCP&L Get Carrying Costs on the Tracked Amounts?

Yes.

C. Argument

1. Introduction

192. Property taxes are assessed by state and local taxing authorities on a yearly basis. The Company and Staff agree that the level of property tax expense has risen since the Company's last rate case. See Tr. 1821. The Company and Staff also agree on the level of property tax expense to be included in KCP&L's revenue requirement (approximately $91 million on a total company basis). The Company also believes that Staff's $91 million amount is appropriate, provided it is also used as the baseline of property taxes for its proposed property tax tracker. See Ex. 112, Hardesty Rebuttal at 24. While the parties agree that property tax expense has increased significantly since the last case, Staff, OPC and MECG advocate that rates be set based on 2014 property tax rates. Since KCP&L's property tax assessment will continue to rise after rates are set in this case, this position denies the Company a reasonable opportunity to recover its property tax expense.

193. Because one of the methods that the Company's property taxes are assessed is based on net operating income, the Company expects that property tax expense will continue to

rise after rates are set in this case and a rate allowance based on historical property tax levels will not be reflective of the Company's on-going property tax expense. For example, in its last rate case the Staff set the property tax expense amount at approximately $76 million (total company basis). See Tr. 1822. As mentioned earlier, Staff's expense number is now $91 million. This is a good example of the type of lag which drove the filing of this rate case. Staff, OPC and MECG want the Commission to use the same method in this case, a method which does not give the Company a reasonable opportunity to recover its prudently incurred property tax expense. The Company's property tax tracker proposal, or if no tracker is adopted, a rate allowance based on a forward looking estimate of property tax expenses, solves this dilemma.

2. The Property Tax Assessment Method Supports Tracker Treatment

194. Missouri and Kansas appraisers use the Cost Approach (based on the cost of plant in service), the Income Approach (based on an average of net operating income of the entity over a period of time) and the Market Approach (based on the stock value of the company) to determine KCP&L's fair market value. See Ex. 113, Hardesty Surrebuttal at 2:14-18. Over the last several years, KCP&L's fair market values established by the state assessment authorities have been very close to the value determined by the Income Approach. Id. at 3-4.

195. The use of the Income Approach by the appraisers results in a significant delay in the increase in property taxes due to large investments made by the Company. As explained by Company Witness Melissa Hardesty on page 5 of her Surrebuttal testimony (Ex. 113), the additional revenue which is expected to be authorized by the Commission is expected to increase rates for Kansas and Missouri customers in the latter part of 2015. This revenue will begin to impact the net operating income or earnings of KCP&L once the rates become effective. This increase in net operating income will impact the assessor's determination of fair market value using the Income Approach on January 1 of the year following the increase in net operating

income. As it will only have a few months of additional revenue in 2015, KCP&L will only see a partial increase in 2016 property taxes related to the investment in La Cygne environmental equipment and Wolf Creek investments. It will likely be 2017 or later before the full impact of the net operating income generated by the new rates authorized due to these investments will be represented in property tax assessments.

196. As shown above, due to the rate cases and other economic factors, the Company expects its net operating income to continue to increase. This will cause the fair market value of the Company to increase and therefore property taxes to increase in 2016 and 2017 above the levels that Staff proposes to use as the rate allowance for property taxes in rates.

3. Staff and OPC's Traditional Method of Calculating Property Tax Expense Does Not Reflect the Reality of How Property Taxes are Assessed

197. Staff annualized property tax expense based upon KCP&L's property in service on January 1, 2015 by multiplying that property amount by Staff's property tax ratio derived from historical tax payments. See Ex. 200, Staff Report at 128. Both Staff and OPC suggest that Staff's historical method should be used by the Commission since this approach has been adopted in the past. See Ex. 308, Addo Surrebuttal at 15; Ex. 200, Staff Report at 129. While Staff's backwards-looking approach may have been adopted by the Commission in the past, it does not allow the Company a reasonable opportunity to recover its property tax costs. Over the last eight years, the Company has under-recovered approximately $11.6 million in KCP&L-Missouri property tax costs because of the lag between when rates based only on historical information take effect and the rising property taxes actually charged to the Company during the period when rates are in effect. See Ex. 136, Rush Surrebuttal at 149.

198. The reason why Staff's methodology is out of date is easy to understand – Staff never examined how property taxes are actually assessed. Staff's method does not recognize that

under the Income Approach, the Company's property tax expense will be steadily increasing because the Company's operating income will be increasing following this rate case. Staff admitted that it was not familiar with the Income Approach used by the assessors and only used the Cost Approach in its analysis. See Tr. 1824. Likewise, OPC witness Addo admitted that the first time he had heard about assessment methodologies other than the cost of plant was by reading witness Hardesty's testimony. See Tr. 1838. This failure to investigate how taxes are actually assessed is telling since one of Staff's and OPC's main criticisms of a tracker is that property taxes are not difficult to identify and that they are a recurring expense that can be annualized. Had Staff and OPC bothered to understand how KCP&L's property taxes are actually assessed, they would have understood that its annualized level will understate the amount of property tax expense experienced by the Company because property taxes are not assessed solely on the Cost Approach.

199. Staff not only ignores how property taxes are assessed, it also ignores data that shows property taxes are not necessarily tied to the cost of the plant. The table on page 10 of Staff witness Lyons' rebuttal testimony shows that plant in service and property tax expense have increased significantly since 2007. That table also shows that the increases in property taxes are not necessarily in relation to increases in plant in service. For example, in 2013 and 2014, the plant in service balance increased by 2% and 4%, but property taxes increased by 6.7% and 6.6%. Ex. 113, Hardesty Surrebuttal at 3: 19-20. Even though Staff had the data to show that the property tax assessments are based on more than increases in plant values, Staff chose to ignore that information so that it could continue its traditional approach.

4. Staff's Other Criticisms are Based on an Incomplete Understanding of the Property Tax Assessment Process

200. Staff believes that the Company's level of property taxes will be decreasing since the Company is no longer in a construction phase. See Ex. 222, Lyons Rebuttal at 11:14-18. First of all, this Staff argument ignores the fact that the Company's rate base will continue to increase after this rate case because its capital expenditure forecasts exceed annual depreciation expense by a considerable amount. Ex. 121, Ives Surrebuttal, pp. 23-24. Second, even if Staff's argument had a factual basis, by making this argument, Staff has ignored the impact that increases in the stock price or net operating income of the Company will have on the amount of property taxes paid by KCP&L. See Ex. 113, Hardesty Surrebuttal at 3:7. As shown above, increases in property tax are not necessarily in relation to increases in plant in service.

5. The Company Has No Control Over the Level of Property Tax Assessments

201. Staff and others assert that a tracker will take away KCP&L's incentive to manage its property tax expenses. In fact, KCP&L has very little control over property tax assessments. By Missouri and Kansas statute, electric utilities are valued at the state level instead of the local level for all property except real estate, rail cars, CWIP and vehicles. See Ex. 113, Hardesty Surrebuttal at 1. Both states start by determining the fair market value of the Company (not the fair market value of the Company's assets or property). Id. at 2. Then the fair market value is allocated pro-rata to the counties based on pole miles in Missouri and the historical costs of property in each county in Kansas. Id. Each county then applies the mill levy for that year and sends KCP&L a bill. Id. For real estate, rail cars, CWIP and vehicles, each county determines the fair market value of each asset, applies a mill levy and sends KCP&L a bill. Id. The Company cannot challenge the amount of the mill levy or change the cost of capital

used by the assessor but it can challenge the valuation assessment. However, it must have a valid basis to do so.

202. Staff has questioned whether KCP&L would vigorously challenge property tax assessments if a tracker was approved by the Commission. See Ex. 235, Oligschlaeger Rebuttal at 10-11. A tracker would make no difference in the process surrounding how often the Company would challenge the assessments. It would continue to do so when appropriate because it knows that a tracker is not a guarantee of rate recovery. Because it knows that cost recovery is at risk, KCP&L will act to protect its interests and those of its customers as it has in the past. See Ex. 113, Hardesty Surrebuttal at 6.

6. Denial of Both a Tracker and a Forward Looking Estimate will Deny KCP&L a Reasonable Opportunity to Recover Its Property Tax Expenses

203. Despite evidence that the amount set in rates for property tax expense has not reflected the Company's actual expense for the last several rate cases and despite the fact that Staff's methodology does not take into account how property taxes are actually assessed, Staff, OPC and MECG continue to use 12 months of historical experience as of December 31, 2014 to set the property tax assessment allowance and to insist that no tracker be used. The Commission should reject these outdated approaches and select one of KCP&L's alternatives to fix the mismatch between the revenues it receives from customers and the property taxes it is actually incurring.

204. First, the Commission could base KCP&L's rates on Staff's $91 million property tax amount and make use of a tracker for the differences between the base amount and the actual property tax expenses incurred by KCP&L after January 1, 2015. KCP&L expects that it would defer approximately $6-7 million if rates in KCP&L's next rate case take effect on January 1, 2018.

205. Alternatively, the Commission could set rates based on a forward-looking estimate of property tax expenses. With this alternative, the annualized level of property tax expenses would be increased by $5.6 million and this sum would be the rate allowance for property tax expense. See Ex. 136, Rush Surrebuttal at 16-17. If actual property tax expenses are less than the rate allowance, the Company would return that amount to customers, plus interest at the applicable short-term interest rate. Id. If actual property taxes exceed the rate allowance, the Company would absorb that amount as a reduction in earnings. This approach is similar to the IEC used for some companies in the early 2000's and is also similar to the forecasted fuel methodology used by the Commission in the early 1980's. Id. and Ex. 150, Case No. ER-82-66 Report and Order and Ex. 151, Case No. ER-83-49 Report and Order.

206. Given that property tax assessments under the Income Approach are based on net operating income, which will be significantly driven by the revenue increase to be authorized by KCP&L's current rate cases in Missouri and Kansas, property tax expense will continue to rise after January 1, 2015 and basing the property tax rate allowance on a fixed historical date will lead to a mismatch of revenues and costs and resulting earnings shortfalls. The Commission should remedy this mismatch with one of the Company's proposals.

207. The use of a property tax tracker will enable the Commission to ensure the appropriate recovery of rising property tax expenses. Cost of service components, such as property taxes, that are out of the Company's ability to control or manage are significant contributors to KCP&L's inability to earn returns reasonably close to returns authorized by this Commission. See Ex. 134, Rush Direct at 28. In the event of future property tax declines, a tracker will protect customers from property tax costs higher than those actually experienced by the Company. Id.

7. Deferred Property Tax Expense Should Accrue Carrying Costs and be Eligible for Rate Base Treatment in a Subsequent Rate Case

208. Because capital is not cost free, KCP&L should be compensated for its carrying costs at a short term interest rate on the funds it advances to fund the property tax expense recovery shortfalls. See Ex. 134, Rush Direct at 29. As recovery of those advances will usually be spread out over several years that won't begin until rates take effect in its next rate case, these advances by shareholders are just like an investment that provides service to customers. Therefore, the Company proposes that the regulatory asset or liability be amortized to cost of service in the Company's next rate proceeding. Id.

VII. CIP/CYBER-SECURITY EXPENSE

A. What Level of CIP/cyber-security Expense Should the Commission Recognize in KCP&L's Revenue Requirement?

209. KCP&L position: If tracker treatment is adopted, then it is appropriate to base the rate allowance for CIP/cyber-security O&M expenses on 12 months of actual experience annualized as of May 31, 2015.

210. However, if tracker treatment is not adopted, then a forward looking estimate of CIP/cyber-security O&M expenses should be used to establish the rate allowance for this item and an additional $3.5 million beyond the May 31, 2015 annualized level of CIP/cyber-security O&M expenses should be included in revenue requirement.

B. Should a Tracker be Implemented for KCP&L's CIP/cyber-security Expense that Varies from the Level of CIP/cyber-security Expense the Commission Recognizes in KCP&L's Revenue Requirement?

211. KCP&L position: Yes.

1. Should KCP&L Get a Return On, as well as Return Of the Tracked Amounts?

212. KCP&L position: Yes.

2. Should KCP&L Get Carrying Costs on the Tracked Amounts?

213. KCP&L position: Yes.

C. Argument

1. Introduction

214. CIP/cyber-security costs result from KCP&L's need to meet governmentally mandated requirements to protect critical infrastructure and secure cyber assets. See Ex. 132, Phelps-Roper Rebuttal at Sch. JFR-1, pp. 5-6. Because new and expanded CIP/cyber-security requirements continue to evolve even while implementation efforts are under way, future cost estimates are necessarily uncertain. Id. at 7-9. What is not uncertain, however, is the fact that future costs will exceed historical CIP/cyber-security costs. Id. at 3. Under these conditions, reliance on historical data to establish the CIP/cyber-security O&M expense allowance included in rates to be effective in the future will not reasonably match costs and revenues. See Ex. 120, Ives Rebuttal at 10-12. That is why KCP&L has requested tracker treatment for CIP/cyber-security O&M expenses[27] or, alternatively in the event no tracker is adopted, a rate allowance based on a forward-looking estimate of CIP/cyber-security expenses with provision for the possibility of credits to customers, with interest, if actual CIP/cyber-security costs prove less than the rate allowance. See Ex. 136, Rush Surrebuttal at 15-16.

215. No party has asserted that CIP/cyber-security expenses should be excluded from regulated cost of service. Rather, the parties who oppose KCP&L's tracker proposal – Staff, OPC and MECG – recommend establishing the rate allowance for CIP/cyber-security O&M expenses on the basis of 12 months of actual experience ending May 31, 2015. Because CIP/cyber-security O&M expenses will continue to rise after May 31, 2015, however, the effect

[27] KCP&L has not requested tracker treatment for capital expenditures required to meet CIP/cyber-security mandates. See Ex. 132, Phelps-Roper Rebuttal at 3:3-4.

of the proposals of Staff/OPC/MECG is to deny KCP&L any meaningful opportunity to recover CIP/cyber-security O&M expense increases that occur after May 31, 2015. While they offer many arguments opposing tracker treatment of CIP/cyber-security expenses, those arguments miss the mark, as will be explained in more detail below. Just as significant, however, is that Staff, OPC and MECG utterly fail to support the reasonableness of using historical CIP/cyber-security O&M expense levels as of May 31, 2015 as the allowance in rates to be charged beginning on September 29, 2015.

2. The Nature of CIP/cyber-security Expenses Warrants Tracker Treatment

216. The FERC has delegated its authority to implement mandatory reliability standards to the NERC which has issued reliability standards in a variety of areas, including cyber-security, which NERC has labeled CIP. See Ex. 132, Phelps-Roper Rebuttal at 6:8-11. NERC has issued various iterations of CIP standards, with CIP version 5 (CIP v.5), which becomes enforceable on April 1, 2016, being the latest to address the expanding needs of the country's critical electric infrastructure. Id. at 6:13-15; 7:19-20. The expanding nature of NERC's CIP requirements can be readily seen by comparing CIP v.3, which focused primarily on KCP&L's Control Centers and was supported by the information technology division ("IT") within the Company, with CIP v.5, which requires enhanced configuration management and access management as well as more stringent physical and electronic access control requirements applicable to a much larger number of assets than just KCP&L's Control Centers. Id. at 7:1-10. Moreover, the expanded CIP v.5 standards continue to evolve, even as the industry is engaged in implementation efforts. Id. at 8:5-11. And CIP v.6 and v.7 standards are under discussion at NERC even while CIP v.5 standards continue to evolve. Id. at 7-8. Not surprisingly, all of this

activity regarding expanded CIP standards makes forecasting precise levels of future CIP/cyber-security costs an uncertain exercise.

217. But uncertainty as to the precise level of future CIP/cyber-security costs does not negate the knowledge that the expanded nature of the evolving CIP/cyber-security requirements means that KCP&L's CIP/cyber-security costs will be considerably higher in the future than they were in the past. In fact, KCP&L has developed budgets for 2015-2017 demonstrating this. Id. at 3:5-6. It should be noted that these budgets are based on KCP&L's current understanding of currently approved CIP v.5 standards, which means that expanded requirements contemplated by CIP v.6 and beyond would only increase KCP&L's costs above the budget levels shown in Mr. Phelps-Roper's testimony. Id. at 8-9; and Tr. 1865. But even the conservative forecasts contained in Mr. Phelps-Roper's testimony show that KCP&L's CIP/cyber-security O&M expenses will rise substantially in 2015 and beyond. And if the CIP/cyber-security O&M expense rate allowance in this case is based on May 31, 2015 levels as recommended by Staff, OPC and MECG, the evidence shows that KCP&L's CIP/cyber-security O&M expenses are forecasted to greatly exceed that amount. See Tr. 1876-1878; Ex. 132, Phelps-Roper Rebuttal at 3:5-6. The revenue shortfall due to the mismatch between a historically based CIP/cyber-security O&M expense rate allowance and higher CIP/cyber-security expenses actually incurred during the rate effective period will cause earnings shortfalls for KCP&L.

218. Staff suggests that KCP&L's forward-looking CIP/cyber-security costs are leveling out because the 2017 forecast is similar to 2014 actual expense. See Ex. 222, Lyons Rebuttal at 27:1-2. However, the analysis on which Staff relies for this conclusion is fatally flawed because it includes forecasted capital expenditures which, as Staff witness Lyons agreed under cross-examination, KCP&L has not requested to be included in the CIP/cyber-security

tracker and are far less impactful on the Company's earnings than O&M expenses. See Tr. 1871-1872. Undertaking a reasonable, apples-to-apples comparison (i.e., comparing O&M expense to O&M expenses, excluding irrelevant capital expenditures) comparison shows that 2017 forecast expenses exceed 2014 actual expenses by more than $5 million. See Ex. 222, Lyons Rebuttal at 27:1-2. As such, this analysis by Staff witness Lyons is irrelevant and the erroneous conclusion she drew from this analysis should be disregarded by the Commission.

219. It also needs to be recognized that because CIP/cyber-security requirements result from governmental mandates regarding both the substance and timing of required activities, the Company has only a limited ability to control CIP/cyber-security costs. Compliance is mandatory and failure to do so can result in penalties in addition to customer disruption. See Ex. 132, Phelps-Roper Rebuttal at 9-10; Tr. 1854-1855 and 1864-1865.

220. Given the certainty that future CIP/cyber-security O&M expense levels during the period when rates will be in effect will significantly exceed the level incurred for the 12-month period ending May 31, 2015, the difficulty to predict precise levels of future CIP/cyber-security O&M expense levels with reasonably certainty, and the fact that CIP/cyber-security standards are governmentally mandated requirements that produce no new revenues and over which the Company has only a limited ability to control, tracker treatment for CIP/cyber-security O&M expenses is entirely appropriate.

3. KCP&L is Required to Manage CIP/cyber-security Expenses Regardless of Tracker Treatment

221. Staff, OPC and MECG argue that use of a tracker will erode KCP&L's incentive to closely manage CIP/cyber-security O&M expenses. This argument fails for a number of reasons. First, costs deferred pursuant to a tracker cannot be included in rates in a subsequent rate case absent Commission approval to do so. See Ex. 129, Overcast Rebuttal at 47:7-19. As a

result, KCP&L is fully aware that any CIP/cyber-security O&M expenses deferred pursuant to a tracker will be reviewed before any rate recovery of those costs will be available. This review provides ample incentive for the Company to closely manage its ongoing CIP/cyber-security O&M expenses. Over and above that incentive, however, the Company operates under annual budgets that are used to assess performance of individuals, project teams, departments and the Company as a whole. CIP/cyber-security compliance is no different. KCP&L also makes use of incentive compensation an element of which is non-fuel O&M expense. See Tr. 1619-1620. The Company's incentive compensation, therefore, provides additional incentive for KCP&L employees to closely manage CIP/cyber-security O&M expenses.

4. KCP&L's Tracker Request is Timely

222. Staff suggests that KCP&L's request for a tracker is premature because implementation plans have not been finalized and cost estimates remain uncertain. See Ex. 235, Oligschlaeger Rebuttal at 12:10-12. Although KCP&L agrees that CIP/cyber-security standards continue to evolve and that this brings an element of uncertainty to both implementation plans and cost estimates, this uncertainty does not allow KCP&L to delay its compliance efforts and the associated incurrence of costs. In fact, CIP v.5 becomes enforceable on April 1, 2016, just more than six months after the rates from this case become effective. Because KCP&L cannot delay its implementation efforts, requiring KCP&L to wait for some indeterminate amount of time to request tracker treatment for CIP/cyber-security O&M expenses in order to be able to meet Staff's supposed need for additional but unspecified information simply means that CIP/cyber-security O&M expenses incurred by KCP&L in substantially excess of historical levels as of May 31, 2015 will not be recoverable. See Ex. 136, Rush Surrebuttal at 15-16.

5. Tracker Treatment of Labor Expense for CIP/cyber-security is Appropriate

223. Staff, OPC and MECG also argue that labor O&M expenses should be excluded from CIP/cyber-security tracker treatment because their inclusion would overly complicate administration and audit of the tracker. Labor O&M comprises a significant portion of total CIP/cyber-security O&M expenses and excluding such costs from tracker treatment would unreasonably deprive the Company of the ability to recover cost increases in this area. See Ex. 133, Phelps-Roper Surrebuttal at 2-3. Further, these bare assertions by Staff, OPC and MECG ignore the substantial work KCP&L has done to develop and implement project governance and management tools that will enable CIP/cyber-security compliance efforts to be planned, monitored and evaluated on a highly detailed basis. See Ex. 132, Phelps-Roper Surrebuttal at 10-11 & Sch. JFR-4, JFR-5 and JFR-6. The Company also contemplates periodic meetings with Staff on KCP&L's ongoing CIP/cyber-security compliance efforts that will provide Staff the opportunity to be informed in nearly real-time about this work and the associated costs. Id. at 11:13-23. In light of these developments as well as the fact that KCP&L must carry the burden of proving the reasonableness of rate recovery of deferred balances in a future rate case, the Commission should reject Staff, OPC and MECG's administrative complexity argument associated with the tracking of labor expense.

224. Excluding labor O&M expenses from a CIP/cyber-security tracker as recommended by Staff, OPC and MECG may also lead to unintended negative consequences. For example, providing tracker treatment of non-labor O&M while excluding labor O&M from tracker treatment would send the message, whether intentionally or not, that KCP&L should undertake its CIP/cyber-security work with more contractors (non-labor O&M) as opposed to internal employees (labor O&M). See Ex. 133, Phelps-Roper Surrebuttal at 3:5-12. This could

lead to higher costs or a lower level of institutional knowledge being retained by KCP&L employees than might otherwise be the case, neither of which would be a favorable outcome. Id. at 3-4.

225. In conclusion, therefore, the Commission should reject the recommendations of Staff, OPC and MECG to exclude labor O&M expenses from the CIP/cyber-security O&M expense tracker.

6. Denial of Both a Tracker and a Forward-looking Estimate of CIP/cyber-security Expenses will Deny KCP&L a Reasonable Opportunity to Recover its CIP/cyber-security Expenses

226. Even when confronted with overwhelming evidence of substantially increasing CIP/cyber-security O&M expenses after May 31, 2015, Staff, OPC and MECG stubbornly insist that reliance upon 12 months of actual historical experience as of May 31, 2015 to set the rate allowance in this case is appropriate and that no tracker should be authorized. The Commission should reject this approach as it elevates methodology (i.e., the use of historical information to set rates) over the reality of the increasing cost environment in which KCP&L currently operates. By solely focusing on methodology, Staff, OPC and MECG ignore the impact that their position would have on the Company. In contrast, KCP&L has offered two reasonable alternatives to remedy a mismatch between the revenues KCP&L charges customers and the CIP/cyber-security O&M expenses it is actually incurring.

227. The first approach proposed by KCP&L is to base rates on an annualized amount of CIP/cyber-security O&M expenses as of May 31, 2015 and make use of a tracker for differences between the base amount and actual CIP/cyber-security O&M expenses incurred by KCP&L after May 31, 2015. Based on the conservative forecasts in Mr. Phelps-Roper's rebuttal testimony and Staff's rate allowance for CIP/cyber-security O&M expenses, KCP&L expects to

defer approximately $6-7 million if rates in KCP&L's next rate case take effect on January 1, 2018.

228. The second approach proposed by KCP&L is to base the rate allowance on a forward-looking estimate of CIP/cyber-security O&M expenses. Under this alternative, the annualized level of CIP/cyber-security O&M expenses as of May 31, 2015 would be increased by $3.5 million and this sum would constitute the rate allowance for CIP/cyber-security O&M expenses. See Ex. 136, Rush Surrebuttal at 15-16. To the extent that actual CIP/cyber-security O&M expenses incurred by KCP&L when rates are effective fall short of the aggregate amount of this rate allowance for that time period, then customers would be credited with the amount of the difference, including interest at a short-term rate. Id. at 16. Any CIP/cyber-security O&M expenses incurred by KCP&L above the rate allowance would be borne by KCP&L's shareholders. This approach is similar to the IEC used for some companies in the early 2000's and is also similar to the forecasted fuel methodology used by the Commission in the early 1980's. Id. and Ex. 150, Case No. ER-82-66 Report and Order and Ex. 151, Case No. ER-83-49 Report and Order.

229. Given the continuing expansion of CIP/cyber-security requirements, it is beyond a doubt that KCP&L's CIP/cyber-security O&M expenses will continue to rise after May 31, 2015 and basing the rate allowance on a fixed historical level as of that date will lead to a mismatch of revenues and costs and resulting earnings shortfalls. Given the dearth of future load growth expected on the KCP&L system in Missouri and increasing trends in other cost of service areas, most notably continued rate base growth, there is no legitimate question that this will be the result if the Commission adopts the position advocated by Staff, OPC and MECG. See Ex. 121, Ives Surrebuttal at 23 and 35, fn. 1.

7. Deferred CIP/cyber-security O&M Expenses Should Accrue Carrying Costs and be Eligible for Rate Base Treatment in a Subsequent KCP&L Rate Case

230. Basing KCP&L's CIP/cyber-security O&M expense rate allowance on historical levels as of May 31, 2015, will necessarily result in cost recovery shortfalls as expanding CIP/cyber-security requirements will drive future costs well above historical levels. No party has seriously challenged this fact. Nor has any party suggested that capital is cost-free. Under these circumstances, KCP&L would be advancing funds necessary to provide service without concurrent cost recovery and rightfully deserves compensation in the form of carrying costs at a short-term interest rate on the funds it has so advanced. See Ex. 134, Rush Direct at 34:13-17. Moreover, because KCP&L's recovery of those advances will likely be spread out over a multi-year period that cannot begin until rates take effect from its next rate case, these shareholder contributions are effectively an investment in providing service to customers and should be afforded rate base treatment and a return at the overall weighted average cost of capital. Id. at 34:18-22. Given the magnitude of the sums being advanced, doing otherwise would deprive KCP&L of a reasonable opportunity to achieve its Commission-authorized earnings level.

VIII. LA CYGNE ENVIRONMENTAL RETROFIT PROJECT: WHAT LEVEL OF KCP&L'S INVESTMENT IN THE LA CYGNE ENVIRONMENTAL RETROFIT PROJECT SHOULD BE INCLUDED IN KCP&L'S MISSOURI RATE BASE?

A. Prudence as a Matter of Law

231. The only party challenging the decision to retrofit La Cygne Units 1 and 2 is the Sierra Club. KCP&L witnesses Burton Crawford and Wm. Edward Blunk discuss in detail the numerous economic studies and fuel models that were prepared in 2010 and 2011 that supported the decision to retrofit the Units. See Ex. 109, Crawford Direct at 16–27; Ex. 110, Crawford Rebuttal at 1–11; Ex. 103, Blunk Direct at 34–40; Ex. 104, Blunk Rebuttal at 2–8.

232. As the evidence showed during the true-up evidentiary hearing, the project came in under-budget and ahead of schedule. It was projected to cost $1.23 billion, but the actual cost of the project is expected to be below budget. See Ex. 252, Hyneman True-Up Direct at 21.The criticism offered by the Sierra Club is based primarily on the evidence that it presented during the Kansas predetermination hearing five years ago. See Ex. 402, Wilson Direct at 8-10 & Sch. RSW-2–RSW-5 (testimony of four witnesses at the Kansas Commission). Each of those concerns was rejected by the Kansas Commission. See Order Granting KCP&L Petition for Predetermination of Rate-making Principles and Treatment, In re Kansas City Power & Light Co., Docket No. 11-KCPE-581-PRE (Kan. Corp. Comm'n, Aug. 19, 2011).

233. The prudence standard in Missouri states that a "utility's costs are presumed to be prudently incurred." State ex rel. Associated Natural Gas Co. v. PSC, 954 S.W.2d 520, 528 (Mo. App. W.D. 1997). Only when another party has "raised a serious doubt" concerning the prudence of the expenditure does the utility assume "the burden of dispelling these doubts and proving the questioned expenditure to have been prudent." Id. See State ex rel. Public Counsel v. PSC, 274 S.W.3d 569, 578 (Mo. App. W.D. 2009); In re Union Elec. Co., 27 Mo. PSC (N.S.) 183, 193 (1985).

234. In this case the Sierra Club has not made the necessary threshold showing of "serious doubt." The testimony submitted by Sierra Club's only witness Rachael Wilson simply suggests that KCP&L "likely" would have changed its plans had it chosen to re-evaluate its decision to retrofit La Cygne beyond what it did. Ms. Wilson stated that if certain steps had been undertaken:

> **(a) KCP&L "… by January 2012 *likely* should have begun to take serious actions to suspend expenditures on the retrofits and plan for an orderly retirement of one or both of the La Cygne Units." See Ex. 402, Wilson Direct at 25:6–8 (emphasis added).**

(b) "Limitations in KCP&L's 2011 planning framework *likely* skewed the modeling results in favor of retrofitting La Cygne …." Id. at 27:13-14 (emphasis added).

(c) " … correcting those limitations would *likely* result in the plan in which all of the La Cygne and Montrose Units were retired …." Id. at 27:15–16 (emphasis added).

(d) "If KCP&L had included more up to date forecasts …, the resulting composite gas price forecast would have been lower … and the outcome of that analysis would *likely* have been different." See Ex. 403, Wilson Surrebuttal at 3:11-15 (emphasis added).

235. Ms. Wilson additionally speculated: "Inclusion of a greater range of resource types in resource expansion portfolios *may* have revealed a less-costly mix of resources that would have allowed KCP&L to meet energy and capacity needs over the planning period." Id. at 35:21-23 (emphasis added). She concluded: "A new analysis *could* have kept KCP&L from making significant capital investments in emission control retrofits at La Cygne Units 1 and 2." Id. at 35:25-27 (emphasis added).

236. In light of this hypothetical and speculative testimony, it is not surprising that Sierra Club did not recommend any specific monetary disallowance in prefiled testimony, which only suggested that "this Commission should deny rate recovery for some or all of the capital costs" associated with the retrofit. See Ex. 402, Wilson Direct at 36:1-3; Ex. 403, Wilson Surrebuttal at 11:14-16.[28]

237. On cross-examination during the evidentiary hearing, Ms. Wilson testified that she "carefully" chooses her words in submitting sworn testimony to the Commission. See Tr. 810:9-12. She conceded that she did not use the word "certainty" with regard to her opinions of

[28] During Commissioner questions, she stated that Sierra Club "leave[s] that to the Commission's discretion," but then suggested a "lower bound" disallowance of $68 million based on "a benefit to the natural gas option" she noted as $136 million in present-value terms. Tr. 824. However, her prefiled testimony relating to that figure fails to recommend it as the basis for any disallowance. See Ex. 402, Wilson Direct at 24:5-7.

the Company's planning and modeling. Id. at 809:17-810:15. The inescapable conclusion is that Ms. Wilson's carefully chosen words clearly communicate the tentative and speculative nature of the Sierra Club's opinions and that of her colleagues who testified not only in the Kansas predetermination case, but in this Company's last rate case.[29] Just as the evidence of imprudence was found by this Commission to be "very thin" in State ex rel. Public Counsel v. PSC, 274 S.W.3d 569, 578 (Mo. App. W.D. 2009), affirming In re Union Elec. Co., Report & Order at 62, No. ER-2007-0002 (May 22, 2007), the evidence is similarly lacking here to find that Sierra Club raised serious doubts regarding KCP&L's decision to retrofit the La Cygne Units.

B. KCP&L's Evidence Demonstrated it Acted Prudently in Retrofitting the La Cygne Units

238. New environmental regulations promulgated by federal and state agencies required La Cygne Units 1 and 2 to be retrofitted with a variety of controls. As described in the testimony of KCP&L witness Paul Ling, the Company's agreement with the Kansas Department of Health and Environment required the installation of equipment by May 31, 2015 in order to comply with the State Implementation Plan of the Kansas Regional Haze Rule. See Ex. 127, Ling Direct at 4-8. The specific environmental controls installed at Units 1 and 2 are described by KCP&L witness Robert Bell. See Ex. 102, Bell Direct at 8-14.

239. The decision to proceed with the environmental retrofit project, as opposed to a different alternative is discussed at length by KCP&L witness Burton Crawford, the Director of Energy Resource Management. See Ex. 109, Crawford Direct at 1, 16–27. Only Sierra Club criticizes this decision. Mr. Crawford reviewed KCP&L's multi-faceted analysis of a series of alternative long-term resource plans which reviewed 64 scenarios that assessed the risk

[29] Schedule RSW-6 to Ms. Wilson's Direct Testimony (Ex. 402) is a 2012 carbon dioxide price forecast that was submitted by her Synapse Energy Economics, Inc. colleague Bruce Biewald in KCP&L's last rate case, Case No. ER-2012-0174.

associated with various critical uncertain factors, including natural gas prices, retail customer load growth, and carbon dioxide costs. Id. at 17 & Sch. BLC-19. The plans resulting from this analysis resulted in an expected 25-year Net Present Value of Revenue Requirement ("NPVRR") that evaluates the risks associated with critical uncertain factors in the electric utility industry. Id. at 17. This process began at La Cygne in 2010 with a series of assumptions regarding environmental controls on existing and new generating units, fuel costs, load growth, demand response and energy efficiency resources, as well as financial issues. Id. at 20–21.

240. The results of this exhaustive analysis are set forth in Schedule BLC-21 which demonstrated that the most cost-effective solution was the retrofitting of La Cygne Units 1 and 2, and the retirement of the three coal-generating units at the Montrose Station. This proposal was designated Plan KP05B. See Ex. 109, Crawford Direct at 24 & Sch. BLC-21.

241. Mr. Crawford stated that at the time the analysis was done in 2010-2011, the least cost alternative to retrofitting existing units to meet environmental requirements was combined-cycle natural gas generation. Id. at 22. However, he noted that retiring the La Cygne units and replacing them with gas generation, followed by the retirement of the three Montrose units with natural gas generation "would result in a significant reliance on the relatively more volatile natural gas market," compared with the coal market. Id. Consequently, KCP&L opted to retrofit La Cygne Units 1 and 2. This option was projected to have an NPVRR over $200 million less than the option to retire both the La Cygne and Montrose generating stations, and replace them with combined-cycle gas units. Id. at 22–24 & Sch. BLC-21 (compare Plan KP05B with Plan KP06C).

242. KCP&L witness Wm. Edward Blunk testified that the Company used a variety of forecasts to assess fuel prices and emission allowances. See Ex. 103, Blunk Direct at 34–40. In

October 2010 KCP&L used forecasts from five leading national sources to assess price forecasts for natural gas, including Cambridge Energy Research Associates, Energy Ventures Analysis, and the Energy Information Administration of the DOE. Id. at 36. He reviewed the process that he used to determine probabilities for both high and low gas prices, as well as the dramatic range of natural gas prices from December 2004 until October 2010 when KCP&L conducted its analysis. Id. at 36–37. By comparison, he noted the relatively stable cost of PRB low-sulfur coal delivered to La Cygne, using the market price of coal as well as the cost to transport it. Id. at 37–38. He also reviewed the process that KCP&L used to forecast the price of carbon dioxide, relying upon seven different forecasts. Id. at 38–39.

243. The major criticism of the Sierra Club is that KCP&L should have used 2011 and 2012 forecasts from the Energy Information Administration's Annual Energy Outlook ("AEO"), as natural gas prices were declining. See Ex. 402, Wilson Direct at 4-5. Given these price trends, Sierra Club argues that KCP&L should have re-evaluated its retrofit decision in April 2011, and "likely should have taken serious action" to halt the retrofit operations and retire one or both of the La Cygne units by January 2012. Id. at 5. However, as Mr. Crawford stated, the Company continued to re-evaluate the La Cygne retrofit decision throughout this period of time and into the future. The original La Cygne retrofit analysis was completed in early 2011, but it was continuously re-evaluated on four separate occasions from 2012 through 2015 as part of the Commission's Integrated Resource Planning ("IRP") Process. See Ex. 110, Crawford Rebuttal at 2, 7. Moreover, as both he and Mr. Blunk testified, KCP&L did not rely on only one price forecast, but rather analyzed several forecasts which over time produce "better results than any single forecast." Id. at 6:12–13; Ex. 104, Blunk Rebuttal at 3–6.

244. As Mr. Blunk explained in response to Commissioner questions, the 2012 IRP did consider the forecast that Sierra Club argues the Company should have used in its retrofit analysis. Mr. Blunk stated that KCP&L analyzed this data, and the result still favored the retrofit of the La Cygne units, even with the decreased price of natural gas. See Tr. 776–77. Mr. Blunk further explained that relying only on the AEO forecast creates problems because it "does not consider potential future regulations," such as the Clean Power Plan proposed by the Environmental Protection Agency ("EPA"), which "would increase demand for natural gas, which would push the price of natural gas up." Id. at 778–79. He additionally noted that the Sierra Club arguments fail to consider the effect of potential regulations governing natural gas hydraulic fracturing ("fracking"), which the Sierra Club strongly favors. Id. at 779.

245. Although Sierra Club's witness professed ignorance of her client's well known national policy in favor of strict fracking regulations, she agreed with Mr. Blunk that if the supply of natural gas were reduced, natural gas prices would increase. See Tr. 779 (Blunk), 818 (Wilson). Ms. Wilson additionally conceded that neither her firm Synapse Energy nor the Sierra Club have expended funds to look at any other fuel forecast except the publicly available AEO which does not consider impending regulations or other trends that could affect fuel prices. See Tr. 803–06.

246. Sierra Club failed to analyze contract cancellation costs, liquidated damages or other penalties that KCP&L would be required to pay if it reversed its decision to retrofit the La Cygne units. See Tr. 819:6–10 (Wilson). More importantly, Sierra Club failed to include the cost to install new generation capacity if the La Cygne units were retired. See Ex. 110, Crawford Rebuttal at 10. To replace KCP&L's share of the La Cygne generating capacity with natural gas combined-cycle generation would have cost approximately $700-900 million. Id. The total of

all these costs alone would have amounted to about $1 billion. Id. As Mr. Crawford concluded, considering all of the relevant issues involved in evaluating the cost of an alternative resource plan, the original La Cygne analysis conducted in 2010–2011 and the subsequent IRP analyses in 2012 through 2015 demonstrate that alternatives would have cost more than the cost of continuing La Cygne operations through the retrofit project. Id. at 10–11.

247. No party, including Sierra Club, has claimed that KCP&L was imprudent in executing the La Cygne retrofit construction project. Staff, concluding "that KCPL's cost control system was well managed and very effective in the La Cygne Project," proposed no adjustments to the costs that the Company has proposed to include in this case. See Ex. 252, Hyneman True-Up Direct at 18, 21. Staff Auditor Charles Hyneman confirmed that the $1.23 billion project is expected to be completed below budget. Id. at 21:6-9.

248. Under Missouri's prudence standard, the Commission looks at whether the utility's conduct was reasonable at the time its decisions were made and the expenses were incurred under all of the circumstances. State ex. rel. Associated Natural Gas Co. v. PSC, 954 S.W.2d 520, 528–29 (Mo. App. W.D. 1997). Given the thoroughness of KCP&L's analysis in 2010–2011, the variety of fuel forecasts and other data that it relied upon, and its subsequent review of the decision to retrofit La Cygne in the 2012–2015 IRP studies, it is clear that the retrofit decision was prudent. Even if Sierra Club is viewed as having raised "a serious doubt" regarding KCP&L's retrofit decision and the expenses which it incurred, the Company has provided abundant evidence to demonstrate the prudence of the La Cygne retrofit decision, as well as the expenditure of funds to complete the project.

IX. RATE CASE EXPENSE

249. This issue is being tried with a backdrop of the a recent Ameren Missouri rate case in which some of the Commissioners expressed interest in examining the current practice

related to the recovery of rate case expenses.[30] However, this case must be decided upon its own merits, and based upon the competent and substantial evidence in the record of this case. As explained below, this is not the case to establish a new rule or policy that would be applicable to all public utilities in the state. In fact, it would be illegal for the Commission to adopt a new policy related to the recovery of rate case expense that would be applicable to KCP&L and other public utilities without conducting a rulemaking proceeding under Chapter 536. For the reasons stated below, the Commission's long-standing practices with regard to rate case expenses should be maintained.

A. Were any Rate Case Expenses Claimed by KCP&L Imprudently Incurred?

250. No.

B. Should the Commission Require KCP&L Shareholders to Cover a Portion of KCP&L's Rate Case Expense?

251. No.

1. KCP&L's Proposal is Consistent with Past Commission Policies Related to the Recovery of Rate Case Expenses

252. In this case, the Company is recommending that the Commission continue to utilize its past policy with regard to rate case expense recovery. Consistent with past approved practices, KCP&L has annualized rate case costs by including projected costs for the current rate proceeding normalized over three years which will be updated with information to be provided by KCP&L on August 12, 2015 as part of the true-up process in this rate case. Annualized rate case costs were then compared to rate case expense amortizations included in the test year to properly reflect rate case expense in cost of service in this rate case. KCP&L estimated costs based on the consultants and attorneys it anticipates will be used in this case and based on the

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[30] See Tr. 621-645; In re Ameren Missouri, Case No. ER-2014-0258 (Feb. 25, 2015).

scope of work anticipated, assuming a fully litigated rate case. After comparing the level of the amortized rate case expense costs currently in rates with the estimated rate case costs in this proceeding, the Company made an adjustment of $840,542 to lower the cost of rate case expense recovered in rates. See Ex. 120, Ives Rebuttal at 16. Under the Company's approach, less than $1.4 million of prudently incurred rate case expenses would be recovered in the rates in this case, amounting to approximately $450,000 annually when normalized over three years. See Ex. 164, Ives True-Up Rebuttal at 12. The Company's proposed treatment of rate case expenses is consistent with a long-standing practice of the Commission to allow the recovery of reasonable and prudently-incurred rate case expenses in revenue requirement.

253. As the Commission correctly acknowledged in its April 27, 2011 order in the investigatory docket on rate case expense treatment (Case No. AW-2011-0330), the Commission's "current rules and practice" are such that "regulated utilities generally recover all costs they incur in presenting a rate case before the Commission."[31] More precisely, regulated utilities have generally recovered in rates reasonable and prudently incurred expenses that they incur in presenting rates cases to the Commission for resolution. Rate case expenses have been reviewed for reasonableness and prudence, but rate case expenses have not been arbitrarily disallowed based upon some notion of proportionate benefits between customers and shareholders.[32] This approach has been an almost universal policy and practice in Missouri for many years.[33]

[31] Order Directing Staff To Investigate And Opening A Repository File, Case No. AW-2011-0330 (April 27, 2011).
[32] See e.g., Report and Order at 159-71, In re Kansas City Power & Light Co. and KCP&L Greater Mo. Operations Co., Case Nos. ER-2010-0355/0356 (Apr. 12, 2011).
[33] Order Regarding Motion To Establish Rate Case Expense, In re Lincoln County Sewer and Water, LLC, , Case No. SR-2013-0321 (July 23, 2014); Report and Order at 36-44, In re Ameren Missouri, Case No. ER-2012-0166 (Dec. 12, 2012); Report and Order at 159-72, In re Kansas City Power & Light Co.

254. The Commission explained its policies with regard to rate case expense in a 1995 Missouri-American Water Company case:

> The Company has the burden of substantiating its rate case expenses, but absent a specific allegation of imprudently incurred rate case expense the Commission will not instigate a rate case within a rate case to examine the actual expenses incurred. . .
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> The Commission finds that the general rule governing rate case expense provides that those expenses which are known and measurable, reasonable, necessary and prudently incurred in the preparation and presentation of the Company's case may be included in the expenses of the Company. The Commission finds that it is in the public interest to allow such expenses for the accurate and adequate presentation of Company's rate case.[34]

255. Often, the reasonable and prudently incurred rate case expenses are amortized or normalized over a number of years, recognizing that rate cases are not filed annually. In KCP&L's recent cases, the Commission has amortized or normalized the reasonable and prudent rate case expenses over two or three years. See Ex. 120, Ives Rebuttal at 17.

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and KCP&L Greater Mo. Operations Co., Case Nos. ER-2010-0355/0356 (Apr. 12, 2011); Report and Order, In re Missouri Gas Energy, Case No. GR-2009-0355 (Feb. 10, 2010); In re Kansas City Power & Light Co., 15 Mo. P.S.C. 3d 138, 177-78 (2006); Report and Order at 31-34, 75-79, In re Algonquin Water Resources, Case No. WR-2006-0425 (2007); In re Missouri Gas Energy, 15 Mo.P.S.C.3d 350, 363 (2007); In re Missouri Gas Energy, 7 Mo. P.S.C. 3d, 394, 411-13 (1998); In re St. Joseph Light & Power Co., 3 Mo. P.S.C. 3d 207, 214 (1994); In re Missouri Cities Water Co., 2 Mo. P.S.C. 3d 60, 68-70(1993); In re St. Joseph Light & Power Co, 2 Mo. P.S.C. 3d 248, 260-61 (1993); In re Missouri-American Water Co., 2 Mo. P.S.C. 3d 446, 449-51 (1993); In re Missouri Cities Water Co., 2 Mo. P.S.C. 3d 119, 137-38 (1991); In re Raytown Water Co., 1 Mo. P.S.C. 3d 367, 383-84 (1992); In re GTE North, 30 Mo. P.S.C. (N.S.) 88, 103-04 (1990); In re Capital City Water Co., 30 Mo. P.S.C. (N.S.) 373, 378-79 (1990); In re St. Louis County Water Co., 29 Mo. P.S.C. (N.S.) 425, 436 (1988) (OPC's "sharing" proposal disallowed); In re U.S. Water/Lexington, 29 Mo. P.S.C. (N.S.) 552-53 (1989); In re Great River Gas Co., 28 Mo. P.S.C. (N.S.) 8, 14-15 (1985); In re Kansas City Power and Light Co., 28 Mo. P.S.C. (N.S.) 228, 262-64 (1986) (OPC's "sharing" proposal rejected); In re Missouri Cities Water Co., 26 Mo. P.S.C. (N.S.) 1, 8 (1983); In re Kansas City Power & Light Co, 26 Mo. P.S.C. (N.S.) 104, 114-15 (1983) (OPC;s "sharing" proposal rejected); In re Southwestern Bell Tel. Co., 25 Mo. P.S.C. (N.S.) 462, 487-88 (1982); In re Missouri Public Service Co., 22 Mo. P.S.C. (N.S.) 193, 204 (1978); In re Missouri Public Service Co., 21 Mo.P.S.C.(N.S.) 22, 31 (1976); In re Gas Service Co., 21 Mo. P.S.C. (N.S.) 262, 269 (1976); In re Central Telephone, 21 Mo. P.S.C. (N.S.) 335, 346 (1977); In re Laclede Gas Co., 21 Mo.P.S.C. 430, 448-49 (1977); In re Missouri Power & Light Co., 20 Mo. P.S.C. 343, 348 (1975); In re Kansas City Power & Light Co., 20 Mo. P.S.C. (N.S.) 592, 611 (1976); In re Gas Service Co., 19 Mo. P.S.C. (N.S.) 250, 257 (1974).

[34] In re Missouri-American Water Co., 4 Mo. P.S.C. 3d 205, 222 (1995).

2. The Staff And OPC's Arbitrary Disallowance Proposal is a Drastic Departure From Past Commission Policy

256. In this proceeding, Staff witness Keith Majors and OPC witness William Addo are recommending a fifty percent (50%) disallowance of prudently incurred rate case expenses. From the Company's perspective, these proposals are an arbitrary disallowance of 50% of prudently incurred rate case expenses necessary to provide electric service. See Ex. 120, Ives Rebuttal at 18-19.

257. While OPC has proposed an arbitrary disallowance of rate case expenses between shareholders and ratepayers numerous times in the past 32 years, these OPC proposals have always been rejected by the Commission, with one exception. Nearly 30 years ago, the Commission adopted OPC's proposal in a unique case involving the Arkansas Power & Light Company's ("APL") Grand Gulf nuclear power plant in Mississippi.[35] That case involved a highly unusual set of circumstances, and provides no precedent for handling rate case expenses in a typical rate case such as this KCP&L rate case.

258. In the Grand Gulf nuclear power plant case, the FERC had allocated 36 percent of the nuclear plant to APL (over APL's objection) which served southeast Missouri and most of Arkansas. It was a highly contentious case involving a proposed rate increase of 46.9% .[36]

259. Evidencing the highly unusual nature of this case, the Commission in its Order Approving Interim Tariff Sheets For Interim Rate Increase Pursuant To Federal Court Order stated as follows:

> In approving these tariffs, the Commission is deeply concerned about the potential economic impact of this federally-ordered interim rate increase on

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[35] In re Arkansas Power and Light Co., 28 Mo.P.S.C. (N.S.) 435 (1986).
[36] 1986 PSC Annual Report, p. 26. http://psc.mo.gov/CMSInternetData/Annual%20Reports/PSC%20Annual%20Reports%20-%20By%20Decade/Annual%20Reports%201980-1989/1986%20PSC%20Annual%20Report.pdf

Company's customers. This dramatic increase could have severe consequences for residential customers, small businesses and industry alike. The Commission strongly encourages Company to work closely with its customers to reach reasonable payment agreements and avoid termination of electric service for bills reflecting this interim rate increase.[37]

260. In the portion of the Commission rate case decision that considered the appropriate treatment of rate case expenses, the Commission stated in part:

> The Commission considers the rate case expenses associated with the nuclear power plants to be abnormal and not representative of normal rate case expense for a utility. In this case, Company is seeking recovery for four rate case filings in one nine month period. This is not a normal occurrence. Company expenses have been increased due to its repeated filings and inability to predict the date of commercial of commercial operation of Grand Gulf. The Mines have proposed no recovery because of these frequent filings. The Commission does not believe this appropriate since Company must file with the Commission to seek rate increases and approval of other matters. The Commission, though, has determined that Public Counsel's proposal of a one-half sharing in this case has validity. The Commission can only conclude that the increased rate filings are an attempt by Company to protect shareholders from any regulatory lag. No benefit to ratepayers can be derived from these premature and frequent filings. The Commission would also point out that Company has incurred rate case expense by seeking recovery for expenses which the Commission has had a long and consistent history of disallowing. The Commission considers the sharing of rate case expense appropriate in this case since the Company has increased its rate case activity to protect the shareholders.[38] (*emphasis added*)

261. Following the adoption of OPC's "sharing" proposal in the APL case, the Commission specifically declined to adopt the APL approach two years later in In re St. Louis County Water, 29 Mo.P.S.C. (N.S.) 425, 436 (1988):

> The Commission does not believe that this is an appropriate case for adopting Public Counsel's concept of sharing rate case expense between the ratepayers and the shareholders. This case is clearly distinguishable from the APL case where the Commission found that APL had exceeded reasonable bounds by filing four rate cases in a period of nine months.

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[37] In re Arkansas Power & Light Co., 28 Mo.P.S.C. (N.S.) 155-56 (1986).
[38] In re Arkansas Power & Light Co., 28 Mo.P.S.C.(N.S.) 435, 447 (1986).

262. According to KCP&L's research, the APL decision is the sole exception to the Commission's traditional approach for the treatment of rate case expenses. It is also an aberration from other cases over the last 32 years because the public utility in APL was "seeking recovery for four rate case filings in one nine month period." This aberration serves as no reasonable guide for the Commission to adopt an arbitrary 50% disallowance of prudently incurred rate case expense in this case or in any rulemaking proceeding establishing a general policy for the recovery of rate case expenses.

263. With regard to KCP&L, the Commission has specifically rejected the OPC's arbitrary disallowance approach in KCP&L rate cases dating back to the 1980s.[39] More recently, in KCP&L's 2010 rate case involving the Iatan 2 coal-fired power plant, the Commission considered the rate case expense issue and disallowed certain rate expenses related to outside consultants on the grounds that they were duplicative of work performed by KCP&L's employees and their attorneys.[40] However, the Commission did not adopt the arbitrary disallowance proposal being advocated in this case. In his concurring opinion in the KCP&L's 2010 rate case, Commissioner Jarrett pointed out the fact that those who argue for arbitrarily disallowing rate case expense overlook the benefits common to numerous constituencies inherent in all the costs a utility incurs in providing service:

> What these arguments fail to recognize is that both shareholders and ratepayers benefit from all kinds of spending by the utility. Ratepayers receive many benefits from expenses that are born solely by the ratepayers (for example, executive bonus programs used to retain excellent managers typically are not included in rate base). Should this Commission require the ratepayers to pay a share of those expenses because they receive the benefit of a properly managed utility? I do not think any ratepayer advocate would argue for that. Rate case

[39] In re Kansas City Power & Light Co., 26 Mo. P.S.C. (N.S.) 104, 114-15 (July 8, 1983); In re Kansas City Power & Light Co., 28 Mo. P.S.C. (N.S.) 228, 263-64 (April 23, 1986).
[40] Report and Order at 168-71, In re Kansas City Power & Light Co., Case No. ER-2010-0355 (April 12, 2011).

expense is a necessary cost of doing business because utilities have a legal obligation to provide safe, adequate and reliable service to ratepayers, and that meeting that obligation may only be achieved through the rate making process. When their costs rise, the utilities' only recourse is to come to the Commission and ask for a rate increase to recover those additional costs. Routinely Staff and other parties vigorously oppose such increases. Utilities must hire lawyers and experts to prove their case because utilities have the burden of proof. It has been my experience that utilities rarely, if ever, receive everything they ask for.

In a cost based regulatory system, like we have here in Missouri, recovery of prudently incurred costs by the utility ensures a balance of the regulatory paradigm. Singling out a cost for different rate treatment, where the same rationale for different treatment could be applied to any other cost, risks disincentivizing utilities to meet their statutory obligations. Because the rate increase proceeding is the only mechanism available to the utility for meeting its regulatory obligations, I believe it is inappropriate, in a cost based regulatory system, to disallow any prudently incurred rate case expenses.[41]

264. The competent and substantial evidence in this case is also consistent with Commissioner Jarrett's opinion. KCP&L witness Darrin Ives testified:

It would make no sense to me to "share" the other costs which benefit both the shareholder and the customer. For example, shareholders benefit from the construction of new power plants because the construction generally increases the shareholders' earnings levels, while customers benefit from the additional capacity used to serve them. Following the logic of Staff and Public Counsel, half of those power plant costs would be disallowed since both the shareholders and customers benefit from those costs. Such a regulatory practice with power plant costs would quickly drive the public utility into dire financial straits, and adversely impact its ability to provide safe and adequate service to its customers. See Ex. 120, Ives Rebuttal at 20-21.

265. In summary, rate case expenses are no different than other ordinary and essential operating expenses of the Company which benefit both shareholders and customers. It would be arbitrary, capricious, and therefore unlawful for the Commission to disallow one-half of prudently-incurred rate case expense on the theory that the rate case benefits both the shareholders and the Company's customers.

[41] Concurring Opinion of Commissioner Terry M. Jarrett, In re Kansas City Power & Light Co., Case No. ER-2010-0355 (filed May 20, 2011). (See also Ex. 120, Ives Rebuttal at 22.

3. There is a Legal Presumption of Prudence Related to Rate Case Expenses

266. The Commission established its standard for determining the prudence of a utility's expenditures in a 1985 decision regarding Union Electric's construction of the Callaway nuclear plant. In that decision, the Commission held that a utility's expenditures are presumed to be prudently incurred, but, if some other participant in the proceeding creates a serious doubt as to the prudence of the expenditure, then the utility has the burden of dispelling those doubts and proving the questioned expenditure to have been prudent.[42] The Commission's use of that prudence standard has been upheld by reviewing courts in numerous cases.[43]

267. The Commission itself explained the presumption of prudence as it relates to rate case expenses in its Order Regarding OPC's Motion to Compel, In re Ameren Missouri, Case No. ER-2010-0036 (March 16, 2010):

> B. The Presumption of Prudence and the Prudence Standard
>
> "In ratemaking cases, a utility receives the benefit of a presumption of prudence with regard to its costs until another party raises a serious doubt regarding the prudence of its expenditure." "When another party raises a serious doubt regarding an expenditure the burden shifts to the utility to prove the prudence of the expenditure." "To determine whether the costs were appropriately incurred, the Commission uses a prudence standard." "Under the prudence standard, the Commission looks at whether the utility's conduct was reasonable at the time, under all of the circumstances." The prudence standard is a legal standard that is applied to the factual findings of the Commission. The ultimate determination of the prudence of the expenses in any disputed invoices lies with the Commission, and while the actual dollars billed for any specific service provided are factual

[42] The "reasonable care standard" was described by the Commission as follows: "The Commission will assess management decisions at the time they are made and ask the question, 'Given all the surrounding circumstances existing at the time, did management use due diligence to address all relevant factors and information known or available to it when it assessed the situation?' "In re Union Electric Co., 27 Mo. P.S.C. (N.S.) 183, 194 (1985). See State ex rel. Capital City Water Co. v. PSC, 850 S.W.2d 903, 911-912 (Mo. App. W.D. 1993).

[43] See e.g., State ex rel. Assoc. Natural Gas Co. v. PSC, 954 S.W.2d 520 (Mo. App. W.D. 1977); State ex rel. Public Counsel v. PSC, 274 S.W.3d 569, 586 (Mo. App. W.D. 2009).

> determinations, whether such expenditures are prudent is a conclusion of law. (footnotes omitted)

268. Furthermore, in In re Ameren Missouri, Case No. ER-2012-0166, the Commission recently rejected OPC's proposed disallowance of the costs associated with outside consultants and outside counsel and the arbitrary disallowance of remaining rate case expenses. Instead, the Commission reiterated its traditional approach that the presumption of prudence applies to rate case expenses:

> 16. Rate case expense is just another cost of doing business for a regulated utility. As a regulated utility, Ameren Missouri has a legal obligation to provide safe, adequate, and reliable service to ratepayers. Because it is a regulated utility, the only way Ameren Missouri can raise its rates to charge what this Commission determines to be just and reasonable is through the rate case process. The rate case process is adversarial, just as is any other civil litigation in this country. That means all parties, including the company, must be able to present their facts and arguments so the Commission can reach a proper and fair resolution.
>
> 17. Shareholders benefit when rates go up to a just and reasonable level, but so do ratepayers. Shareholders may receive higher dividends and benefit from higher stock prices, but ratepayers receive the benefit of safe, adequate, and reliable service. No one benefits when a utility is deprived of the ability to charge its customers a just and reasonable rate.
>
> * * *
>
> Conclusions of Law:
>
> A. The Commission established its standard for determining the prudence of a utility's expenditures in a 1985 decision regarding Union Electric's construction of the Callaway nuclear plant. In that decision, the Commission held that a utility's expenditures are presumed to be prudently incurred, but, if some other participant in the proceeding creates a serious doubt as to the prudence of the expenditure, then the utility has the burden of dispelling those doubts and proving the questioned expenditure to have been prudent.
>
> B. The Commission's use of that prudence standard has been upheld by reviewing courts in numerous cases.
>
> C. The Commission's prudence standard applies to Ameren Missouri's expenditures for rate case expense just as it would apply to any other expense that the Commission is reviewing in this case.

> D. Based on the facts as set forth in its Finding of Fact for this issue, the Commission concludes that Public Counsel has failed to present sufficient evidence to create a serious doubt regarding the prudence of Ameren Missouri's decision to engage the services of outside expert consultants and legal counsel for the presentation of this rate case. Therefore, those costs are presumed to be prudently incurred.[44]

The Commission's prudence standard applies to KCP&L's expenditures for rate case expense just as it would apply to any other expense that the Commission is reviewing in this case.

4. KCP&L's Rate Case Expenses Are Reasonable and Prudent

269. Notwithstanding the legal presumption of prudence related to rate case expenses, the record reflects that the Company has not adopted a "cost-is-no-object" approach to rate case expenses. As Darrin Ives explained, KCP&L has worked to control its rate case expense. It extensively utilizes its own employees and in-house counsel and only seeks the assistance of outside consultants and attorneys where Company employees are unable to handle all of the work necessary to process and defend a rate request.

270. Schedule DRI-8 attached to Mr. Ives' rebuttal testimony (Ex. 120) is a flowchart which depicts the process the Company utilizes to manage rate case expense. This process helps ensure the monitoring and control of those costs. Like other expenses necessary to provide service to customers, the Company strives to be as efficient as possible in the presentation of its case while attempting to clearly explain its position on the issues to the Commission. The Company knows that its rate case expenditures will be carefully and thoroughly reviewed by the Staff and other parties to determine their reasonableness and prudence.

271. In addition, the Company does not recover its rate case expenses on a dollar for dollar basis under the traditional method of handling rate case expenses. Often, the rate case

[44] Id. at 41-42. The Commission also opened Case No. AW-2011-0330 as a separate investigative case to examine the question of rate case expense in a more general manner.

expenses are normalized over a greater number of years than the period between rate cases. As a result (and as happened in this case), the next rate case is often completed before all prudently incurred rate case expenses for the previous case have actually been recovered. The Company has an incentive to be efficient in the presentation of its rate cases as well as the purchase of other services necessary to provide safe and adequate electric service to our customers.

272. It is reasonable and necessary to use outside consultants and outside counsel who have particular expertise and experience in the issues in this rate case to help prosecute the case before the Commission. The Company's rate case team must address the positions, facts, and legal arguments raised by the other parties who oppose the Company's requests.

273. In this case, the Staff's Cost of Service Report was authored by at least 24 staff experts, and its Rate Design Report had four additional Staff authors. OPC and other intervenors in the case have filed the direct testimony of nine additional witnesses. The record reflects that 35 outside persons have signed Non-Disclosure Agreements (NDAs) in this case indicating that they are authorized to review highly confidential and proprietary information on behalf of one or more of the parties to this case, in addition to the in-house experts of Staff and OPC who are not required to file NDAs. See Ex. 120, Ives Rebuttal at 24-25.

274. The Company has chosen to use primarily its in-house experts to address the claims of Staff, OPC and numerous intervenors. These employees, of course, have duties far broader than supporting the Company's rate increase requests. Moreover, their testimony is often Company-specific and not necessarily based upon an expertise that is industry-wide. While relying principally on these in-house personnel, the Company has also found it necessary to file the testimony of four outside experts. These outside experts have performed: (1) the depreciation study required by the Commission's rules (Spanos); (2) a cost of capital/capital

structure analysis using industry-wide data (Hevert); (3) a highly specialized study to determine the cost of dismantling KCP&L's non-nuclear generating units (Rogers); and (4) a survey of ratemaking practices and the use of regulatory mechanisms by utility regulatory commissions across the country (Overcast). These are the types of testimonies and studies that are generally performed by outside experts in rate cases in Missouri. See Ex. 120, Ives Rebuttal at 25.

275. KCP&L has a right to utilize the resources it needs to respond to the issues and arguments raised by Staff, OPC and intervenors who have opposed the request to increase the rates. It is also important for the Commission to have a complete record that will enable it to consider all relevant factors and reach a proper resolution of the case as it determines the just and reasonable rates that will be charged to the customers in the future.

276. There were 19 attorneys representing Staff, OPC and intervenors in this proceeding:

Staff: 9
OPC: 2
Sierra Club: 4
Consumers Council of Missouri: 1
MIEC: 1
MECG: 1
DOE: 1

277. KCP&L entered the appearances of four attorneys. KCP&L's in-house counsel, Messrs. Robert Hack and Roger Steiner, have extensive experience processing Missouri rate cases. They have worked diligently to prepare and process this rate case, including significant overtime activities to represent the Company. However, given the number of parties represented by a multitude of lawyers, and the quantity and complexity of the issues addressed in this case, the Company found it necessary and appropriate to employ outside counsel who have represented the Company in numerous rate cases and other Commission proceedings in the past

to supplement the in-house legal team. Outside counsel Karl Zobrist and James Fischer have been involved in all KCP&L rate cases since the Comprehensive Energy Plan was approved by the Commission in 2005. The Company's legal team (both in-house and outside counsel) have the expertise and experience to address the legal arguments raised by Staff, OPC and intervenors. However, the Company does not believe it would have been prudent or reasonable to only rely upon its in-house staff of attorneys to process this case. See Ex. 120, Ives Rebuttal at 25-26.

(a) Staff and OPC Raise No Serious Doubt Regarding the Prudence of Dr. Overcast's Costs, Nor Do They Prove That His Testimony was "Duplicative"

278. In surrebuttal testimony, Staff witness Majors and OPC witness Addo propose to disallow all of Company witness Dr. Edward Overcast's costs as being "duplicative." See Ex. 226, Majors Surrebuttal at 62-63; Ex. 308, Addo Surrebuttal at 27-28. However, Staff and OPC have not supported their proposed disallowance with evidence that raises a serious doubt as to the prudence of these costs.

279. KCP&L retained Dr. Overcast to respond to the direct testimony of numerous parties filed in this case against the FAC and tracker proposals. The Company believed that it needed additional expertise regarding these alternative regulatory mechanisms, especially with regard to how other state commissions have responded to regulatory lag. While the Company did have witnesses that submitted direct testimony on the subject, none of those witnesses could offer a national perspective. See Tr. 971.

280. As set forth above, a utility's costs are presumed prudent until another party raises a serious doubt regarding the prudence of expenditures. At the hearing, Staff witness Majors directly stated that Dr. Overcast's costs are not imprudent and that it was not imprudent for the Company to retain Dr. Overcast. See Tr. 1041. With this statement, Staff has conceded that it is

not even trying to raise a serious doubt as to prudence. Thus, the presumption of prudence regarding Dr. Overcast's costs stands.

281. The Staff and OPC adjustment is based on their unsupportable conclusion that Dr. Overcast's work was duplicative. Under cross-examination, Staff witness Majors stated that Dr. Overcast's testimony deals with non-Missouri regulatory approaches and that these regulatory mechanisms were not addressed by any other KCP&L witness. See Tr. 1035, 1037, 1038. Similarly, OPC witness Addo admitted that no other Company witness besides Dr. Overcast addresses the differences between an AAO and a RAM and no other Company witness besides Dr. Overcast explained that deferred accounting treatment may be part of a RAM. See Tr. 1075. Thus, the witnesses that are making the duplicative claim admit that Dr. Overcast provided testimony in areas where no other Company witness provided testimony.

282. The argument that Mr. Overcast's testimony was duplicative and thus did not provide value to ratepayers, also contradicts what the Commission and the Staff itself looks for when investigating policy issues. The Staff and the Commission itself, often seek out what other state commissions are doing regarding regulatory issues. For example in Case No. AW-2011-0330, the Commission asked the Staff to review the approaches of other states with regard to rate case expense. See Tr. 1051. Staff was also interested in looking at the practices of other states. See Tr. 1052. However, Staff did not have the in-house expertise to know how the rate case expense issue was being addressed nationally so it reached out to other commissions to find that information. See Tr. 1052. Just like the Staff, the Company did not have the in-house resources to provide the Commission with guidance on how other states dealt with an important policy issue. Yet Staff and OPC propose to disallow all of Dr. Overcast's costs because they are allegedly duplicative. Not only was Dr. Overcast's work not duplicative but it also provided a

national perspective, something that the Commission has requested in other dockets. The Company should not be penalized for bringing the Commission the information that could guide it in its decision making in this case.

(b) OPC's Hourly Rate Reduction for Outside Counsel Should be Rejected as it Does Not Raise a Serious Doubt Regarding the Prudence of These Costs

283. OPC witness Addo makes the claim in his surrebuttal testimony that the rates for the Company's outside counsel are "exorbitant" and proposes to reduce those rates to $200 per hour. Mr. Addo makes this claim by comparing the hourly rate of Messrs. Fischer and Zobrist to the hourly rate of Ameren outside counsel (Smith, Lewis) and the statewide average found in a bar association survey. Both of these comparisons do not withstand scrutiny.

284. In judging whether a cost is "exorbitant," one must determine the total value received for the total cost paid. OPC witness Addo is not qualified to make this determination as he admitted that he has no training on how attorneys set their rates nor has he ever talked to any attorney about how they set their rates. See Tr. 1068. Mr. Addo admitted that he did not compare the background and experience of all the Ameren outside counsel with Messrs. Fischer and Zobrist. See Tr. 1071. He did not calculate the number of hours that Ameren's outside counsel spent on the rate case. See Tr. 1070. Nor did he take more than a casual look at the tasks that were completed by Ameren's outside counsel in Ameren's last rate case. See Tr. 1071. Indeed, Mr. Addo seemed unaware of what those tasks consisted of. Id. He knew that Ameren's outside counsel took depositions but only because they deposed his OPC co-workers (Tr. 1072) but apparently did not consider it meaningful that KCP&L has conducted no depositions in this case. See Tr. 1039. Clearly, Mr. Addo did not compare the type of work and tasks undertaken by Ameren's outside counsel and KCP&L's outside counsel.

285. But this comparison is vital to OPC's claim that KCP&L has incurred excessive legal costs compared to Ameren since the total legal bill will consist of not only the hourly rate but also the hours spent on rate case activities. It appears that Ameren used outside counsel for tasks not undertaken by KCP&L in this case, such as depositions. The total bill must be assessed to determine the reasonableness of legal costs, not just the hourly rate. This difference in usage will affect the level of rate case expense. The Commission should note that Ameren's total rate case expense in Case No. ER-2014-0258 was $2,391,209 which will be amortized over two years and recovered at $1,366,975 per year.[45] By contrast, KCP&L's rate case expense is projected to be $1,362,261 to be amortized over three years at $454,087 per year. There is no basis to conclude that KCP&L has incurred an unreasonable level of attorneys' fees in this case.

286. OPC witness Addo also attached two pages from a 2013 bar survey to his surrebuttal testimony (Schedule WA-5). He claims that this data shows that the median hourly rate for sole law practitioners is $151 - $200 even though none of the outside counsel employed by Ameren or KCP&L are sole practitioners. The bar survey is based on 2012 data of only 998 total respondents. The survey specifically says that it should not be used as an absolute standard. See Ex. 164, Ives True-Up Rebuttal at 11. The survey does not list the rates charged for attorneys who specialize in rate case proceedings, in fact Schedule WA-5 does not list the experience level of the attorneys nor their area of specialization. Finally, Schedule WA-5 itself shows that 64% of the lawyers who are not sole practitioners and who reported their rates to the bar survey charge more than $200 per hour. Schedule WA-5 does not show that $200 per hour is

[45] See Concurring Opinion of Commissioner Daniel I. Hall in the Order Approving Amended Stipulation and Agreement regarding certain Revenue Requirement Issues, Case No. ER-2014-0258, June 11, 2015, fn. 2.

a reasonable rate for KCP&L and ratepayers to pay for outside counsel nor does it raise a serious doubt as to the rates KCP&L pays its outside counsel.

287. The fact that OPC's $200 rate is unreasonably low is also shown by the fact that OPC made the same adjustment to another utility's attorney fees (OPC requested that outside counsel fees be reduced to $200) in a 2004 MGE rate case.[46] Why should the attorney rates stay the same for over 10 years when no party contests that other costs have risen substantially since then.

5. Staff and OPC's Proposal to Arbitrarily Disallow 50% of Prudently Incurred Rate Case Expense Should Be Rejected On Policy Grounds

288. Numerous policy reasons support the Commission's traditional approach for the recovery of rate case expenses: (1) rate cases are a normal and essential cost of doing business for a regulated utility; (2) the Commission has already recognized that the arbitrary disallowance of 50% of this cost of doing business would restrict the public utility's ability to put on its rate case and violate its procedural rights; and (3) the arbitrary disallowance of 50% of prudently incurred rate case expenses will make it more difficult for the Company to earn its authorized rate of return.

(a) Rate Cases Are A Normal And Essential Cost of Doing Business for A Regulated Utility.

289. The Commission has recently and unequivocally recognized that the cost of processing a rate case is a normal and essential cost of business of any regulated public utility:

> Rate case expense is just another cost of doing business for a regulated utility. As a regulated utility, Ameren Missouri has a legal obligation to provide safe, adequate, and reliable service to ratepayers. Because it is a regulated utility, the only way Ameren Missouri can raise its rates to charge what this Commission determines to be just and reasonable is through the rate case process. The rate case process is adversarial, just as is any other civil litigation in this country. That

[46] Report And Order, In re Missouri Gas Energy, Case No. GR-2004-0209, p. 78 (Sept. 21, 2004).

> means all parties, including the Company, must be able to present their facts and arguments so the Commission can reach a proper and fair resolution.[47]

290. As KCP&L witness Darrin Ives explained in this proceeding, rate case expenses are no different from other expenses that provide benefits to customers (i.e. generation, transmission and delivery expenses) because both shareholders and customers benefit from the Company's continued operation. Simply put, periodic rate increases are necessary, just and reasonable, and provide a benefit to the customer by keeping the public utility financially healthy and in a position to provide the customers with safe and adequate service at just and reasonable rates. The customer is the primary beneficiary when a utility provides safe, adequate and reliable service. This fundamental objective can only be accomplished if the Company is able to attract investment by providing a reasonable return to its shareholders. As KCP&L has suggested throughout this case, rate cases and the regulatory mechanisms approved in rate cases are necessary and essential if the Company is to be in a position to adequately attract capital and have a reasonable opportunity to earn its authorized rate of return. See Ex. 118, Ives Direct at 110-12.

(b) The Arbitrary Disallowance of 50% of Reasonable and Prudently-Incurred Rate Case Expenses Would Violate KCP&L's Procedural Rights

291. A fundamental problem with an arbitrary disallowance of 50% of prudently incurred rate case expense is that it effectively serves to restrict the Company's ability and right to direct its presentation of its case, and to choose its legal and regulatory strategy before the Commission in rate case litigation that is required to obtain adequate levels of rates. This is so even with the KCP&L witness Darrin Ives' testimony that imposition of an arbitrary disallowance of 50% of prudently incurred rate case expenses would not cause the Company to

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[47] Report And Order, p. 41, In re Ameren Missouri, Case No. ER-2012-0166 (Dec. 12, 2012).

deviate from its practice of devoting the level of resources it believes is necessary to present the facts to the Commission. See Tr. 1014-1016

292. The Commission has already acknowledged in numerous cases a public utility's right to make these decisions as long as its costs are prudently incurred: "The Commission is hesitant to disallow expenses incurred by MGE in prosecuting its rate case. The company is entitled to present its case as it sees fit and the Commission will not lightly intrude into the Company's decision about how best to present its case."[48]

293. In the 1993 Missouri Cities Water rate case, the Commission expressed a similar concern as follows:

> The Commission does not want to put itself in a position of discouraging necessary rate cases by denying rate case expense. This is a particularly treacherous area for the Commission to be addressing in that the Commission cannot be viewed as having a dampening effect upon a regulated company's statutory procedural rights to seek out a rate increase when it believes the facts so justify it. Disallowing prudently incurred rate case expense can be viewed as violating the company's procedural rights. At the same time, if it was determined by clear and convincing evidence that a rate case was frivolously filed, then the Commission would be under a duty to protect ratepayers from imprudently incurred costs.[49]

294. In a 1994 St. Joseph Power & Light Company rate case, the Commission explained its concern as follows:

> The record contains no evidence that such expense was not prudently incurred and, as the Commission noted in Case No. ER-93-41, it does not want to put itself in the position of discouraging necessary rate cases by discouraging rate case expense. The Commission cannot be viewed as having a dampening effect upon a regulated company's statutory procedural rights to seek out a rate increase when it believes the facts so justify it. Disallowing prudently-incurred rate case expense could be viewed as violating a company's procedural rights.[50]

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[48] Report and Order at 75, In re Missouri Gas Energy, Case No. GR-2004-0209 (Sept. 21, 2004).
[49] In re Missouri Cities Water Co., 2 Mo. P.S.C. 60, 69 (1993).
[50] In re St. Joseph Light & Power Co., 3 Mo. P.S.C. 207, 214 (1994); In re St. Joseph Light & Power Co., 2 Mo. P.S.C. 3d 248, 260 (1993).

295. The Commission's concern that it should not be violating a company's procedural rights or have a dampening effect upon the presentation of rate cases is legitimate, and should not be discarded in this proceeding.

(c) The Arbitrary Disallowance of 50% of Reasonable and Prudently-Incurred Rate Case Expenses Would Make It More Difficult For the Company To Earn Its Authorized Rate of Return

296. An arbitrary disallowance of 50% of the reasonable and prudently-incurred rate case expense does not create an incentive to control rate case expenses. As KCP&L witness Darrin Ives explained, this approach will merely make it more difficult for the Company to earn its authorized rate of return. See Ex. 120, Ives Rebuttal, pp. 27. It is appropriate and reasonable for the Commission to review rate case expenses as to reasonableness and prudence. However, an arbitrary disallowance of half of all prudently incurred rate case expenses is not reasonable or good public policy. It would certainly not be good public policy for the Commission to establish a new policy in this proceeding that represents a marked departure from its historic practices with regard to the recovery of reasonable and prudently-incurred rate case expenses, and a major departure from the practices of other states on this issue.

6. The Approach Consistently Used in Missouri for Rate Case Expense Recovery Is Consistent With The Practices In Other States

297. In Case No. AW-2011-0330, the Staff surveyed other states to determine how these states treated rate case expense. Based upon the Staff Report, it appears that none of the states that responded to the survey utilized the approach being advocated by Staff and OPC to arbitrarily disallow 50% of prudently incurred rate case expenses. See Ex. 243, Staff Report on Rate Case Expense Matters in Case No. AW-2011-0330 (HC).

298. On page 8 of 16 of the Report (Ex. 243), it stated:

> A total of 50 public utility commissions received Staff's questionnaire, and responses were received from agencies. All of these responses can be found in Attachment 4 to this report. Of the 22 commissions that sent a response, four PUCs responded to Staff's questions by stating that rate case expense was essentially a non-issue in their jurisdictions due to use of incentive or formula rate regulation in those jurisdictions. Of the remaining PUCs, most indicated that their policy towards recovery of rate case expense was very similar to the current policy of the Missouri Commission – no sharing or cap on the total amount of recovery of this item, and all prudent expenditures allowed recovery. In several instances, Staff went beyond the survey responses and performed additional research to obtain information on other states' rate case expense policies. (*Footnotes omitted; emphasis added*)

299. Based upon the Staff's survey of the various states in Case No. AW-2011-0330, it is clear that the Commission's consistent historical practice regarding recovery of rate case expenses is in the mainstream of the practices of other states that have not restructured the electric industry or otherwise utilized formula or performance-based ratemaking. In fact, if the Commission adopts the arbitrary disallowance of half of prudently incurred rate case expenses, as suggested by Staff and OPC, then the Commission will be drastically departing from its own long-standing policy as well as the policies of every other state with a regulated (non-restructured) electric market.

7. The Adoption of A Policy Arbitrarily Disallowing 50% of Prudently Incurred Rate Case Expenses Would Constitute a New Policy of General Applicability And May Not Be Implemented Without a Rulemaking Proceeding Conducted Pursuant to Chapter 536

300. The Commission may not adopt a new policy toward the recovery of rate case expenses without conducting a rulemaking proceeding. The rulemaking process set out in Chapter 536 must be followed for an agency's "policy" to have the force and effect of law. Section 536.021(6) provides that rules or amendments made in contravention of the rulemaking process are void.

301. Section 536.010(4) provides, in pertinent part, that the term "rule" means "each agency statement of general applicability that implements, interprets, or prescribes law or

policy...." An agency standard is a "rule" if it announces "[a]n agency statement of policy or interpretation of law of future effect which acts on unnamed and unspecified facts ...." Missourians for Separation of Church and State v. Robertson, 592 S.W.2d 825, 841 (Mo. App. 1979). Clearly, if the Commission announced a statement of policy related to the arbitrary disallowance of rate case expenses for this rate case and future proceedings, it would be considered a "rule" under Section 536.010(4), and as a result, it would require a rulemaking proceeding before it could be implemented. In other words, if the Commission wishes to review its long-standing statewide policy toward the recovery of rate case expenses by public utilities, it must follow the appropriate rulemaking procedures. It may not apply this new policy to KCP&L before such a policy is published and interested parties are given the opportunity to comment on the changed policy.

302. An unpublished "policy" of the Commission which met the definition of a rule was held to be invalid and no force. See State ex rel. Gulf Transport Co. v. PSC, 658 S.W.2d 448, 454[11](Mo.App.1983); State ex rel. Beaufort Transfer Co. v. PSC, 610 S.W.2d 96, 99[4] (Mo.App. W.D. 1982).

303. More recently, the courts have held that an amendment to an agency's statewide policy cannot be given effect if the rulemaking procedures have not been followed. In NMC Hospitals, Inc. v. Department of Social Services, 850 S.W.2d 71 (Mo.App. 1983), the Court held that the Department of Social Services could not amend its statewide policy toward Medicaid reimbursements without following the procedures in the state Administrative Procedures Act.

304. While the Commission may render its decision in a contested case based upon the specific facts of the case, it may not, as a matter of policy, decide upon a new statewide policy that would be applied to KCP&L without a notice and comment period under Chapter 536.

305. In conclusion, the Commission should continue to follow its long-standing past practice with regard to the recovery of rate case expenses. The Commission should adopt KCP&L's proposal in this proceeding, and reject Staff and OPC's proposal to arbitrarily disallow half of the reasonable and prudently-incurred rate case expense.

C. What Level of Rate Case Expense for This Rate Case Should the Commission Recognize in KCP&L's Revenue Requirement?

306. As shown above, the Commission should reject 1) Staff and OPC's proposal to disallow the costs of KCP&L witness Overcast, 2) OPC's proposal to reduce KCP&L's outside counsel rates to $200/hour and 3) Staff and OPC's proposal to disallow 50% of KCP&L's prudently incurred rate case expense. KCP&L's total rate case expense through true up is less than $700,000 and is projected to be less than $1.4 Million. See Ex. 164, Ives True Up Rebuttal at 12. As set forth in the Partial Non-Unanimous Stipulation and Agreement as to True Up, Depreciation and Other Miscellaneous Issues, rate case expense will be updated by the Company on August 12. The amount of rate case expense filed by the Company on August 12 should be amortized over three years.

X. SHOULD THE COMMISSION ORDER A MANAGEMENT AUDIT OF KCP&L?

307. No. There is no need for a management audit that would be time-consuming and expensive when KCP&L's management is proactively managing its costs and personnel, and continually evaluating methods and procedures that would improve KCP&L's efficiency.

308. Relying solely upon his faulty analysis of KCP&L's administrative and general ("A&G") costs and his observation that KCP&L's rates have increased over the last five or six years (Tr. 128-29), MECG/OPC witness Lane Kollen has recommended that the Commission order a management audit of KCP&L. See Ex. 500, Kollen Direct at 4-13. For the reasons stated herein, this recommendation should be rejected.

309. Mr. Kollen used the FERC Form 1 data to compare KCP&L and other electric companies in the area. See Ex. 500, Kollen Direct at pp. 5-6, 8, 10-11, Sch. LK-2, LK-3, and LK-4. Based upon this data which Mr. Kollen admitted was "indicative, not determinative" (Ex. 501, Kollen Surrebuttal at 7), he concluded that KCP&L's A&G expenses were significantly higher than other utilities operating in the region. See Ex. 500, Kollen Direct at 9. However, he also observed that "In general, the overall O&M expense using the metrics shown in the preceding table for KCP&L and GMO together is comparable to the average of the other utilities operating in the state and region. . . " See Ex. 500, Kollen Direct at 7. As explained below, his conclusions that KCP&L's A&G levels are excessive is simply wrong.

310. KCP&L witness Ryan Bresette refuted Mr. Kollen's allegations that KCP&L's A&G costs were excessive. See Ex. 105, Bresette Rebuttal at 3-11. He explained that the recording of expenses to A&G by utilities is very subjective and open to interpretation under the FERC USOA. As a result, not every cost is recorded to the same FERC account for every utility and the recording of A&G costs is not consistent among utilities. For example, the results will vary depending upon whether the public utility owns or leases its headquarters and service center buildings. KCP&L leases its headquarters buildings and records the expense to an A&G account, FERC Account 931, while other utilities that own their headquarters building would be required by FERC USOA to record depreciation expense on their headquarters building in FERC Account 403 which is not a component of A&G. Id. at 7-8. In addition, one utility might record compensation to a FERC A&G account, while another utility may record the same expense to a FERC operations account. Id. at 3. Finally, it is also common for a company to undertake individual initiatives that other utilities do not engage in. For example, KCP&L engages in

extensive energy efficiency and solar rebate programs which require administrative support that may not be necessary for utilities with relatively smaller programs. Id. at 3-4.

311. Mr. Kollen himself recognized that public utilities account for expenses differently using the FERC accounts: "There are differences in the way that utilities account for O&M expenses and A&G expenses. And that's why a top-down type of analysis like I have performed and like the Staff has performed, you could get indications of costs and the relative costs among the utilities—but it's not determinative." See Tr. 1205-06. According to Mr. Kollen, this occurrence is not just a concern-- "That's a fact." See Tr. 1206. In fact, he provides numerous examples in his testimony and during cross-examination where utilities record expenses differently (e.g. outside services, tree trimming expenses, contract services, engineering, mapping services, headquarters and service center buildings, regulatory assets and liabilities, solar rebate programs, etc.) See Ex. 500, Kollen Direct at 15; Tr. 1206-09. Such differences in the treatment of the expenses may skew the comparative analysis of public utilities when the analysis is based solely upon FERC Form 1 data.

312. The Commission itself recognized the inappropriateness of using FERC Form 1 data to make comparisons between utilities in its Report And Order at 28 In re Missouri Gas Energy, Case No. GR-2004-0209, stating:

> As was demonstrated in this case, there is really no way to determine with any degree of certainty that one company is more efficient than another. MGE attempted to do so by comparing its annual operating and maintenance expense to that of other Missouri gas companies. However, as Staff pointed out, operating and maintenance expenses are subject to many variables and are not a good basis for determining management efficiency. Although none of the evidence presented actually demonstrates that MGE is any more or less efficient than other gas companies, there was a lot of evidence filed on that question and its presentation took up a good deal of hearing time. The Commission does not wish to encourage a flood of indeterminate and ultimately pointless testimony on the question of management efficiency in future rate cases. (*footnotes omitted*).

313. Because of the inherent difficulties in making comparisons with FERC Form 1 data, companies like KCP&L participate in benchmarking studies to make comparisons amongst companies as meaningful as possible. In 2014, KCP&L and GMO participated in a benchmarking study facilitated by PA Consulting Group based on 2013 financial statements. The benchmarking study primarily focused on A&G expenses. In this study, there were 14 other utilities in addition to KCP&L and GMO. See Ex. 105, Bresette Rebuttal at Sch. RAB-2.

314. Mr. Bresette explained the PA Consulting benchmarking study as follows:

> This benchmark analysis evaluated the Corporate and Shared Services costs both in aggregate and major functional categories. The objective was to identify the costs involved in those activities that are either necessary for overall corporate governance or for activities which are normally shared across multiple lines of business in order to achieve economies of scale or scope. The group worked together with PA Consulting to understand and benchmark their Corporate and Shared Services activities. The process included reviews and revisions of questionnaire, input and review of data collection and entry, data validation, reporting results and a knowledge sharing sessions. All companies provided feedback for the questions and breadth of the survey. The process included extensive validation of data through on-site visits, peer-to-peer networking, meetings, conference calls, ad-hoc surveys and one-on-one dialogs. In addition, statistical and performance report comparisons were used to identify differences to validate. When data is determined final for all participating companies, a normalization process is used for reporting. The normalization approach gives equal weight to the company's gross margin, net assets, and number of full time employees. KCP&L's process included all of the above and several internal meetings and reviews with the business. Each division participated in providing data and reviewing data in reference to the definition of each category to provide consistent comparisons of benchmarking reports. In this benchmarking study costs are reviewed to provide apples to apples comparison across utility companies for each category as opposed to a one size fits all used for FERC reporting. See Ex. 105, Bresette Rebuttal at 6-7.

315. As shown in Schedule RAB-1(NP)[51], KCP&L/GMO's A&G costs are not excessive and are, in fact, below the median of the other utilities that participated in the benchmarking study. While there were 14 utilities participating in the benchmarking, there were

[51] Schedule RAB-1(HC) was de-classified during the hearing. See Tr. 1158-60.

seven utilities that provided data for all processes analyzed in the benchmarking study. These processes included Communications & Advertising, Environmental Affairs, Facilities, Finance, Governmental Affairs, HR, Health & Safety, Information Technology, Legal, Regulatory Affairs and Security.

316. As shown on Schedule RAB-1(NP), KCP&L (designated as company "M") is significantly below the median. In the benchmarking study, each utility was not required to provide data for every area. KCP&L/GMO, along with six other utilities, provided data for all of the processes in the benchmarking study. See Ex. 500, Kollen Direct at 11; Ex. 105, Bresette Rebuttal at Sch. RAB-1(NP). As a result, this study refutes MECG's allegation that KCP&L's A&G costs are excessive. In reality, KCP&L's A&G costs are less than the median level for the public utilities participating in the benchmarking study.

317. Even if the Commission reviews the FERC Form 1 data used by Mr. Kollen and Staff (which are less reliable), the Commission should conclude that KCP&L's A&G costs have been declining over time while other public utilities' A&G costs have been increasing. For example, in 2011 to 2013, the KCP&L's metrics that Mr. Kollen provided for A&G costs per customer are decreasing from $339.18 in 2011 to $302.53 in 2013. During this same period, KCP&L's A&G costs on a per megawatt-hour basis are decreasing from $8.53 to $7.18. Similarly, the A&G costs per revenue dollar for KCP&L are declining from .115 to .0932. Other public utilities' data during this period showed increases. See Tr. 1174-75. Based upon Mr. Kollen's FERC Form 1 data, KCP&L's A&G costs are declining rather than increasing.

318. Perhaps most importantly, there is simply no need for a management audit of KCP&L at this time. In answer to Commissioner Hall's inquiry, Ryan Bresette explained that there are processes within KCP&L and GMO by which the company reviews its cost structures.

These processes include the PA Consulting benchmarking study discussed above, as well as a Solomon generation benchmarking study, and a supply chain study performed by KPMG to assist in streamlining costs and processes across the organization between KCP&L and GMO. As explained by Mr. Bresette, KCP&L's management is continually reviewing all processes across the entire company:

> We are constantly reviewing all of our processes. . . I refer to it in my area as a . . . continuous process improvement to continue to ask ourselves why we do such and such reporting or prepare schedules for people; you know, we take the view that we need to make sure we're doing everything to meet the legal and regulatory requirements, but, in addition, provide enough analysis for the Company to make effective decision making.
>
> In addition to that, I have responsibility over the budget and forecasting area. And so one of the processes that we do to kickoff our budget process is to do detailed analysis of each department's budget and what the components are of labor with the associated head count and also on—on the nonlabor spend and go through in detail of each of the areas' planned expenditures for the upcoming year and for the out years as well.
>
> So we're continuously looking at all processes across the organization as a whole. See Tr. 1165.

319. The competent and substantial evidence in the record also clearly demonstrates that KCP&L is doing a good job related to its reliability and customer satisfaction metrics. KCP&L was awarded the Reliability One award from PA Consulting for having the best reliability performance in the Plains region for the year 2013. This is the eighth consecutive year KCP&L has received this recognition. See Ex. 120, Ives Rebuttal at 4-5. KCP&L's System Average Interruption Duration Index (SAIDI), a measure that combines both frequency and duration for a 'total picture' view of reliability has been in the top 25Th percentile when compared to 71 other Midwestern utilities through the Edison Electric Institute's Reliability Survey Report for the years 2011-2013. Id. at 9-10. KCP&L's contact center performance has consistently provided quality service and performance over the past several years. This

performance is measured using statistics including Abandons, Average Speed of Answer and Service Level. Id.

320. Throughout the year, KCP&L conducts multiple surveys that provide valuable customer insights. Based upon these survey results, eight out of ten customers surveyed in March 2015 have a favorable impression of KCP&L. KCP&L consistently ranked high in both customer service (89%) and overall job performance (89%). Over half of the surveyed customers indicated that they were either "Very Satisfied" or "Strongly Approve" of KCP&L's electric service. Based upon the survey results, most customers feel KCP&L is an honest company (79%) and are a good corporate citizen (76%) with the communities they serve. See Ex. 149, KCP&L Response to Commission Requests for Information at Attachment 3.

321. Based upon the competent and substantial evidence in the record, it is clear that MECG/OPC have put forward no meaningful evidence to substantiate their allegations regarding excessive A&G costs or their recommendation for a management audit of KCP&L. Consequently, there is no basis for the Commission to order the management audit requested by MECG/OPC. See Ex. 120, Ives Rebuttal at 50. If OPC/MECG believed KCP&L has incurred unreasonable or unnecessary costs, then they should have proposed to disallow specific costs on that basis. The Commission should not burden KCP&L or its customers with the expense of a management audit based upon the unsubstantiated concerns raised by MECG and OPC.

XI. CLEAN CHARGE NETWORK

A. Should all Issues Associated with KCP&L's Clean Charge Network be Considered in a Separate Case, and Not Considered in This Case?

322. No. The Commission should consider in this proceeding whether KCP&L's proposal for recovery of the costs of the proposed Clean Charge Network ("CNN") pilot program should be adopted. It is important that the Commission support the development of electric

charging technology at this time. While the Commission, the Company, and other stakeholders will certainly be studying the results of KCP&L's pilot program in the future, after it is implemented, it makes no sense to delay the process at this time.

323. KCP&L's Proposal: KCP&L and GMO have launched an initiative to install and operate more than 1,000 electric vehicle charging stations throughout the Greater Kansas City region and within the KCP&L and GMO service territories. This initiative, in furtherance of the company's commitment to environmental sustainability, is capable of supporting more than 10,000 electric vehicles.

324. Upon completion it will be one of the largest utility-owned electric vehicle charging station installations in the United States. The first charging stations deployed will provide "fast charging", enabling a vehicle to charge from empty to 80% of full charge in about 30 minutes. There are expected to be 15 of these sites. The remaining sites will provide approximately a 25 mile charge for every hour the vehicle charges. The stations will be located throughout the KCP&L and GMO service territories near where people live and work. See Ex. 119, Ives Supp. Direct at 1-2.

325. KCP&L is partnering with organizations throughout its service territory. These organizations will host the charging station sites. Through these partnerships and a partnership with Nissan Motor Company ("Nissan"), the CCN will offer free charging on every station to all drivers for a pilot period. The host sites' charging station energy usage will be separately metered; electricity costs for charging station usage will be paid, through the partnership with Nissan for the fast charging stations and by the hosts for the remainder of the charging stations, at standard tariff rates. Space for the charging stations will be provided by the host site. See Ex. 119, Ives Supp. Direct at 2.

326. As explained by Mr. Ives, this pilot project is large enough to be impactful, but is moderately sized from a capital expenditure perspective and extends KCP&L's commitment to environmental sustainability. Along with KCP&L's environmental upgrades at several local power plants, renewable energy portfolio and energy efficiency programs and KCP&L's recent announcement regarding cessation of burning coal at certain KCP&L and GMO generating units between 2016 and 2021, the KCP&L CCN will reduce carbon emissions and help the Kansas City region attain EPA regional ozone standards which is beneficial to the entire Kansas City region. In addition, the CCN helps to eliminate 'range anxiety' in the region, which is the number one roadblock to greater electric vehicle adoption. As more drivers adopt electric vehicles, not only will vehicle emissions be reduced, but the cost of operating and maintaining the electrical grid will be spread over increased electricity usage. Finally, the collaborative stakeholder working group docket that KCP&L has proposed can be used to explore other potential benefits, including the Company's integrated management of the CCN, possibilities for vehicle to grid programs and potential impacts on implementation of the EPA's Clean Power Plan. Id. at 3.

327. The Company plans to learn from these installations, gathering information during the pilot period to be shared with stakeholders in developing a longer term view. KCP&L has asked the Commission to open a working docket so that interested stakeholders can learn more about KCP&L's CCN and collaboratively discuss issues including, but not limited to, impacts on retail customers, impacts on utilities, pricing alternatives, and other issues. See Ex. 119, Ives Supp. Direct at 2.

B. Is the CCN a Public Utility Service?

328. Yes. For the reasons stated herein, the CCN is a public utility service under Missouri law.

1. Public Utility Status

329. Under KCP&L's CCN pilot, the Company will be providing electricity service to the charging stations at the Company's tariffed rates. The charging stations are separately metered, and the bills will be paid either by Nissan for the fast charging stations, or the host site owners for the remaining charging stations. The revenues from those stations receiving separate bills are identifiable by account, and the revenues from those stations where the usage is added to the customer's main meter can be observed based on metered usage. The CCN pilot is no different than any other part of its regulated distribution system which it provides as a regulated public utility.

330. However, Staff has argued that "the Clean Charge Network is a separate network of electric vehicle charging stations. The charging stations are equipment used to charge vehicles. The network is not a public utility service." See Staff Position Statement at 17. According to Staff witness Byron M. Murray, the "Clean Charge Network should not be regulated as a utility service because the Clean Charge Network is a discretionary project initiated by KCPL." See Ex. 233, Murray Surrebuttal at 4; Tr. 680. Staff's argument on this legal point is incorrect.

331. Section 386.020(43) defines a "public utility" as any "electrical corporation" "owning, operating or controlling or managing any electric plant. . . "[52] KCP&L is an "electrical

[52] Section 386.020(43) states: "Public utility" includes every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heat or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter." (emphasis added)

corporation,"[53] owning, operating, controlling and managing the electric vehicle charging stations. The electric vehicle charging stations are "electric plant" under Section 386.020(14)[54] which facilitates the distribution, sale or furnishing of electricity for power.

332. Missouri case law has imposed the further requirement that such service must be offered "for public use." See State ex rel. Danciger and Co. v. Public Service Commission of Missouri, 275 Mo. 483, 205 S.W. 36 (1918). Relying on Danciger, the federal court in City of St. Louis v. Mississippi River Fuel Corporation, 97 F.2d 726 (8th Cir. 1938), state that the public use of a service is the deciding factor in determining whether an operation is a "public utility" under Missouri law. It concluded that "under Missouri law the term 'for public use' . . . means the sale . . . to the public generally and indiscriminately, and not to particular persons upon special contract." Id. at 730. The City of St. Louis court cited with favor the following definition:

> To constitute a public use all persons must have an equal right to the use, and it must be in common, upon the same terms, however few the number who avail themselves of it. Id.

333. The Commission should conclude that KCP&L is providing electrical service to the electric vehicle charging stations as a public utility. The service will be available to any host site owner and any electrical vehicle owner that wishes to avail themselves of the electric

[53] Section 386.020(15) defines electrical corporation as: "Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others. (emphasis added)

[54] Section 386.020(14) states: "Electric plant" includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power; (emphasis added)

service. The Commission should conclude that the electric vehicle charging stations are part of the Company's regulated local distribution network which is necessary to provide electricity to the electric vehicles. As such, KCP&L's CCN facilities should be treated as electric plant needed to provide electric service to electric vehicle charging stations and ultimately to electric vehicles owners as a public utility service.

334. The Staff agrees that the electricity provided by KCP&L to the charging stations is a regulated service: "To clarify Staff's position, Staff agrees that the sales to a customer's meter are regulated by the Commission, but recommends that the Commission not regulate the sales from charging stations to electric vehicles." See Ex. 240, Stahlman Surrebuttal at 4; Tr. 737-42.

335. Under Staff's proposed model, the electricity from the charging stations to the electric vehicles would be provided on an unregulated basis—at unregulated prices. See Tr. 741. According to Staff witness Stahlman, the charging station owners (or KCP&L itself) would be able to charge electric vehicle customers for this service at unregulated prices. See Ex. 240, Stahlman Surrebuttal at 10; Tr. 742.

336. As described by Mr. Stahlman, Staff is recommending that the Commission follow the model used for the sale of compressed natural gas ("CNG") to CNG vehicle owners. See Tr. 740; Ex. 200, Staff Report at 208. Under this model, the sale of natural gas by the regulated local distribution company to the compressor station is regulated and provided at tariffed rates, but the sale of the CNG to CNG vehicle owners is not regulated and is provided at market prices. See Tr. 740-41.

337. While Staff's model may be workable for the CNG marketplace which apparently allows the resale of natural gas after being compressed, it will not work for the charging of

electric vehicles since the resale of electricity is prohibited in Missouri. See Tr. 633-34. KCP&L's approved tariffs prohibit the resale of electricity, except under certain grandfathered situations which are not relevant to this issue.

338. As found in the Company's Rules and Regulations, 5.03 RESALE AND DISTRIBUTION: "… the Company will not supply electric service to a Customer for resale or redistribution by the customer." Unless the Commission determines that requiring payment for electricity used to charge electric vehicles is something other than the sale or resale of electricity, only KCP&L may provide this service in its certificated service territory. It is KCP&L's understanding that unregulated entities would be prohibited from doing so. See Ex. 120, Ives Rebuttal at 47. See Section 5.03, KCP&L Tariff, P.S.C.MO. No. 2, Second Revised Sheet Nos. 1.19-1.20 and Fourth Revised Sheet 1.21.[55]

339. Under Section 5.03 of this tariff, the resale of electricity is defined as:

> (a) "Resale" shall mean the furnishing of electric service by a Customer to another person under any arrangement whereby the Customer makes a specific or separate charge for the electric service so furnished, either in whole or in part, and whether the amount of such charge is determined by submetering, remetering, estimating or rebilling as an additional charge, flat, or excess charge, or otherwise.

Under this definition of "resale", charges for the electric service by the third-party owner of an electric vehicle charging station to the owner of an electric vehicle would be prohibited.

340. The Missouri statutes also recognize that "Missouri has historically restricted competition with respect to electricity . . . by authorizing the Missouri public service commission to limit the number of providers. . . " Section 393.297(3). Section 393.170(1) has prohibited electrical corporations from beginning construction of electric plant without first having obtained

[55] https://www.efis.psc.mo.gov/mpsc/CommonComponents/viewdocument.asp?DocID=4060752&Version=12

the permission and approval of the Commission. In addition, no person, other than an electrical corporation or a political subdivision, may provide retail sales of electricity unless the person is certified by the Commission as a seller and files an agreement with the Commission to pay to the political subdivision all applicable business license taxes. Section 393.299(1).

341. Staff witness Murray also raised the specter that allowing KCP&L to participate in the electric vehicle charging pilot project "would undermine this naturally developing market since KCPL, unlike its competitors, would have the advantage of recovering the costs of the charging stations from captive customers who do not own EVs." See Ex. 232, Murray Rebuttal at 10; Tr. 694. However, during cross-examination, it became apparent that Mr. Murray was unfamiliar with the prohibition against resale of electricity. See Tr. 694-95. Nevertheless, Mr. Murray recognized that if a restriction on the resale of electricity existed, then it was unlikely that third-party providers of electric vehicle charging stations would enter the market at all. See Tr. 693, 709.

342. The evidence in the record also shows the importance of the participation of public utilities in the development of the electric vehicle charging markets. Mr. Ives has included in his supplemental direct testimony extensive studies that discuss the experience of California with electric vehicle charging issues. See Ex. 119, Ives Supp. Direct at Sch. DRI-2 and DRI-3. As explained by Mr. Ives, California initially prohibited public utilities from providing this service. Eventually, the policy was reversed because, without the participation of the public utilities in the state, the market did not develop. See Tr. 631-33.

343. In summary, the Commission should find and conclude that the CCN is a public utility service under Missouri law.

C. If So, Who Pays For It?

344. In this proceeding, KCP&L is requesting that the Commission include the plant-in-service related to the CCN as of May 31, 2015 (i.e. $730,000), as well as the O&M cost of $213,079. This represents about 10% of the total capital to be deployed for KCP&L's Missouri jurisdictional share of the pilot project. See Tr. 630. The Company estimates the annual impact of this request for a typical residential Missouri customer to be 43 cents per year, or just under 4 cents per month. See Tr. 567. KCP&L intends to proceed with the pilot program, notwithstanding the Commission decision on cost recovery at this juncture. See Tr. 583. As a result, KCP&L shareholders will be making the additional investments required to complete the program at least until the next general rate case.

345. Staff witness Murray recommends denial of Company's request stating, "KCP&L, its investors, and the affiliates of the project are the cost causer of the electric vehicle charging stations. The cost causers should cover the full cost of this project, not the captive ratepayers. This venture is a voluntary effort by KCPL, which has significant financial risk". See Ex. 232, Murray Rebuttal at 4.

346. As noted by Mr. Ives, KCP&L does not deny that this venture is a voluntary effort by KCP&L. However, anytime the Company builds a substation, or upgrades a line, or builds-out service to a new subdivision due to anticipated new load, it is at the Company's discretion. It is the business of the Company to anticipate new load and the need for new or upgraded infrastructure to serve customers. In that regard, the Company is always the cost causer and often there is risk involved with that new investment. There is no basis for denying recovery for these reasons as it is the responsibility of the Company to provide the infrastructure to serve load. In this case, the load happens to be mobile and requires infrastructure not previously

deployed. That fact does not make it an imprudent investment. See Ex. 121, Ives Surrebuttal at 54-55.

347. There are five areas of customer and public benefit that KCP&L believes the CCN pilot project can provide:

- Beneficial Electrification: More efficient use of the electrical grid through increased electrical sales during off-peak times. As more drivers adopt electric vehicles, not only will vehicle emissions be reduced, but the cost of operating and maintaining the electrical grid will be spread over more kilowatt-hours without causing increased investment in additional generation and grid upgrades.
- Environmental Benefits: Environmental and health benefits through reducing tailpipe emissions—in particular regional ozone emissions and compliance, carbon dioxide reduction as part of state compliance with the Clean Power Plan, and reductions in other EPA categorized pollutants.
- Economic Development: Regional economic development through increased attraction of auto industry, electric vehicle industry, battery and charging station companies to the KCP&L service territory; local job creation through increased household spending on local goods and services rather than at the gas pump; direct and indirect job creation from electric vehicle charging station deployment, electric vehicles sales and servicing; and increased talent recruitment in competitive job categories such as STEM (Science, Technology, Engineering, Math) and IT jobs.

348. Customer Programs: Network enabled customer programs for cost-effective demand side management, time of use incentives/rates, and vehicle to grid battery storage and discharge.

349. Cost and Efficiency Benefits: Cost and design benefits through installation and operation of charging station installations as part of the electrical grid resulting in

- Reduced cost of equipment and installation, streamlining infrastructure through central design, enabling easier expansion, creating one regional standard for payment and
- Reduced expense resulting from electric vehicle charging stations utilization of the electrical grid:
  - Study the value of integration with other components of the grid, such as demand response and solar installations.
  - Increased efficiency and decreased cost of charging station infrastructure through streamlined design, deployment where data shows capacity is needed, reduced maintenance costs and economies of scale.

350. Charging station deployment and demand can be factored into utility grid planning and reduce the cost of meeting increased demand and maintaining the grid. See Ex. 121, Ives Surrebuttal at 56-67.

351. Since all customers will benefit from this investment, it is logical that all pay for some portion of the investment. As explained above, it is a modest investment that is expected to produce benefits for all customers. KCP&L hopes to learn from these installations, gathering information during the pilot period to be shared with stakeholders in developing a longer term view. KCP&L is interested in discussing with interested stakeholders issues related to this pilot program including, but not limited to, impacts on retail customers, impacts on KCP&L, pricing alternatives, and other issues. In the meantime, it is important that the Commission indicate that it supports this effort, especially at a time when the Company's load is flat or declining.

352. The Company therefore respectfully requests that the Commission include a modest portion of the expected costs of this program in the rates in this proceeding represented by the CCN pilot plant-in-service as of May 31, 2015 and the expected annual O&M expenses. Under this approach, shareholders would still be advancing the lion's share of the investment in the CCN pilot until KCP&L's next rate case.

XII. INCOME TAX-RELATED ISSUES (INCLUDING ACCUMULATED DEFERRED INCOME TAXES OR "ADIT"): WHAT ADJUSTMENTS, IF ANY, ARE NECESSARY TO ENSURE THAT KCP&L'S INCOME TAX ALLOWANCE, INCLUDING ADIT MATTERS, IS CALCULATED APPROPRIATELY?

353. MECG witness Mr. Brosch has proposed four adjustments to the amount of accumulated deferred income taxes ("ADIT") in rate base. See Ex. 502, Brosch Direct at 4, 46-62. The first adjustment is to include the CWIP related ADIT liability balance in rate base. The first adjustment would reduce revenue requirement by $573,265 as of true-up. The second adjustment is to exclude the ADIT asset balance related to the lease on the KCP&L downtown office building ("1KC Lease") from rate base. The third adjustment is to exclude the ADIT asset balance related to deferred employee compensation and bonus pay from rate base. The second and third adjustments in the aggregate would reduce requirement by $795,985 as of true-up. And the fourth adjustment is to compute the amount of net operating loss ("NOL") carry-forward ADIT asset in rate base on a KCP&L standalone basis instead of using the amount computed under the Company's tax allocation agreement ("TAA") with GPE and its other subsidiaries. The fourth adjustment would reduce revenue requirement by $453,743 as of true-up. See Ex. 502, Brosch Direct at 4.

354. For the reasons stated herein, the Commission should reject each of the adjustments proposed by MECG to KCP&L's income tax expense.

A. <u>Inclusion of ADIT Liability Related To CWIP in Rate Base</u>

355. Federal tax law allows KCP&L to utilize accelerated and bonus depreciation and other means to effectively defer the payment of income taxes associated with construction projects. Because of the differences between tax accounting and regulatory accounting, KCP&L is able to collect money from ratepayers to cover those taxes before it must pay the taxes. Such deferred taxes are accumulated in ADIT accounts.

356. The type of ADIT at issue in this case is created when tax law allows a utility to deduct costs associated with a construction project that, under financial and regulatory accounting rules, must be capitalized and depreciated over a period of time. Because the tax benefits resulting from deferred income taxes are not immediately flowed through to ratepayers, credit ADIT balances represent essentially a free source of capital available for use by the utility. In other words, that credit ADIT balance is a free loan to the company from ratepayers. However, as explained below, the existence of a NOL effectively negates the benefits of the cost free loan. An ADIT liability offsets or reduces rate base, while an ADIT asset increases rate base.

357. As explained by KCP&L witness Melissa Hardesty, KCP&L has appropriately excluded the ADIT liability related to CWIP since the capital expenditures have not been included in rate base. Under Missouri law, CWIP may not be included in rate base. <u>See</u> Section 393.135 RSMo. Since CWIP may not be included in rate base, the ADIT liability (i.e. the offset to rate base) should not be included either. It is unfair to include the ADIT offset to rate base when the CWIP itself may not be included.

358. Since CWIP cannot be included in rates in Missouri, KCP&L's customers are not paying the costs associated with the plant under construction. Instead, KCP&L has to bear the

full cost of the investments until the plant is fully operational and used for service (Section 393.135), and it is included in rate base.

359. In this case, MECG witness Brosch and Staff witness Majors have argued that since ratepayers are paying a return on the CWIP investments in the form of AFUDC, MECG and Staff should be allowed to include the ADIT liability in rate base (an offset to rate base) before the asset is placed in service. This position should be rejected for a number of reasons, including the fact that although AFUDC accrues during construction, customers do not begin paying rates which include the costs related the asset until it is used for service and included in rate base, which is the same time they get credit for the ADIT under KCP&L's proposed treatment.

360. Contrary to the position of MECG witness Brosch and Staff witness Majors, the AFUDC earned on a gross investment will not over-compensate KCP&L for its actual investment in newly constructed assets. Mr. Brosch argues that the Company will get an out of pocket cash tax benefit for tax basis differences related to CWIP. He argues that this out of pocket cash tax benefit is not included in the AFUDC computation and therefore rate base should be reduced for this ADIT related to the CWIP tax basis difference before the assets are placed in service to compensate ratepayers for this free loan.

361. This argument is wrong because KCP&L generated a NOL during the period that the assets were in CWIP and it has not and will not receive a cash tax benefit related to the tax basis differences related to CWIP in this case. Therefore it is not appropriate to offset rate base for the ADIT balances because no cash tax benefit was received related to the ADIT balances.

362. An NOL is created when, in any year, a taxpayer reports more deductions than it has revenues. Under the generally applicable tax rules, an NOL can be carried back two years or

forward 20 years. In the year in which it is carried to, an NOL is treated like an additional deduction, reducing the taxable income otherwise produced in that year. The general rule is that an NOL must be carried back to the earliest possible year and then, to the extent not absorbed, applied to subsequent years in chronological order. When an NOL must be carried forward, a portion of the deductions claimed by the taxpayer in the year that the NOL is created will not offset taxable income and not reduce the taxpayer's tax liability. As a result, the existence of the ADIT on CWIP does not provide any cost-free capital since it is negated by the existence of the NOL for the year. See Ex. 112, Hardesty Rebuttal at 11-12.

363. Therefore, ratepayers have not been denied any tax cash benefit in the computation of AFUDC and the ADIT liability should not be included in rate base prior to being placed in service. See Ex. 112, Hardesty Rebuttal at 3-5.

364. Mr. Brosch and Mr. Majors cite to the decision of the Commission on CWIP related ADIT in the 2012 Ameren Missouri rate case, Case No. ER-2012-0166, to support their position that ADIT related to CWIP should be included as an offset to rate base in this case. However, as explained by Melissa Hardesty, the 2012 Ameren rate case order was silent to whether an NOL was generated for Ameren when the ADIT liability related to CWIP was generated KCP&L clearly did have an NOL for the period in question that precluded it from receiving the tax cash benefit identified by Mr. Brosch for tax basis differences related to CWIP. Since KCP&L had an NOL that negated the benefits of the tax timing differences, KCP&L did not receive a "free loan" from the CWIP-related ADIT balance.

365. Since KCP&L did not receive the cost-free loan from CWIP-related ADIT balances since KCP&L experienced an NOL in 2014, and through May 31, 2015, the Commission should reject the adjustment proposed by MECG and Staff in this case.

B. Exclusion of ADIT Asset Related to the 1KC Lease from Rate Base

366. The second proposed adjustment is related to the exclusion of the ADIT asset related to the 1KC Lease. Unlike the ADIT related to CWIP discussed above which is an offset or reduction to rate base, this ADIT increases rate base. Because the deduction for 1KC Lease has not been taken on a tax return, but has been taken for financial and regulatory purposes, the ADIT asset represents tax benefits that the ratepayers have received in computing income tax expense but that the Company has not gotten on its tax returns. MECG witness Brosch argues that the accrued liability for the deferred rent payments on the 1KC Lease on KCP&L's books was not included in rate base, and therefore the ADIT on this tax timing difference should also be excluded from rate base. See Ex. 502, Brosch Direct at 55-56. Like his other adjustments, Mr. Brosch's adjustment related to the exclusion of the ADIT asset related to 1KC Lease [and employee compensation and bonus pay] would decrease revenue requirement. KCP&L disagrees with these adjustments.

367. As explained by KCP&L witness, Melissa Hardesty, KCP&L has not included the accrued liability for the deferred rent payments on the 1KC Lease in rate base. This exclusion is appropriate because the accrued liability is being amortized monthly as a reduction to rent expense in cost of service. This reduced rent expense is also included in KCP&L's lead lag computation of cash working capital. Therefore, the impact of this liability has been included in this case and the ADIT related to this liability should also be included in rate base. See Ex. 112, Hardesty Rebuttal at 6-7.

C. Exclusion of ADIT Asset Related To Employee Compensation And Bonus Pay From Rate Base

368. Mr. Brosch also proposes to exclude the ADIT asset related to employee compensation and bonus pay from rate base. See Ex. 502, Brosch Direct at 55-56. This

adjustment would also decrease the revenue requirement since it would result in a lower rate base amount since ADIT assets increase rate base. This proposed MECG adjustment is similar to the proposal for the 1KC Lease, whereby the liability for the accrued employee compensation and bonus pay is not in rate base so the ADIT asset related to this tax timing difference should also be excluded. Both deferred compensation and incentive compensation are included in the overall cash working capital computations and the payroll expense included in cost of service. Therefore, the impact of this liability has been included in this case and the ADIT asset related to this liability should be included in rate base. See Ex. 112, Hardesty Rebuttal at 7-8.

D. Computation of ADIT Assets Related To NOLs on a KCP&L Stand-Alone Basis

369. In the Company's filing, KCP&L reflected the impact of its NOL carry-forward for tax purposes as an ADIT asset (a deferred tax asset) of approximately $55.9 million. This had the effect of increasing rate base by that amount (by decreasing the overall ADIT liability balance which reduces rate base). See Ex. 112, Hardesty Rebuttal at 8-9.

370. Mr. Brosch proposes to reduce the NOL carry-forward ADIT asset by computing the NOL amounts on a KCP&L "stand-alone" basis instead of using the amounts computed under the GPE and subsidiaries TAA. This adjustment would have reduced the Company's true up filing rate base amount by $4,421,802. See Ex. 502, Brosch Direct at Sch. MLB-4.

371. KCP&L reduces its rate base by its net ADIT liability balance (sum of deferred tax assets and deferred tax liabilities) as a result of timing differences between deductions for tax purposes and financial statement purposes. The net deferred tax liability is used to reduce rate base because it represents a source of cost-free capital (a reduction in the amount of cash paid for tax purposes) the Company has received as a consequence of claiming certain tax deductions. In a year that the Company generates a NOL for tax purposes that is carried forward, the NOL

carry-forward reduces the amount of cost-free capital it received. Therefore, the Company has reflected in its rate base computation the actual impact its NOL has had on the amount of cost-free capital it received using the method prescribed under the Internal Revenue Service regulations to allocate losses to companies within a consolidated group.

372. Mr. Brosch proposes an alternative to reflecting the actual quantity of cost-free capital received. He proposes that the Commission impute for this purpose the hypothetical quantity of cost-free capital that the Company would have received if it had always filed a separate federal income tax return ("stand-alone") instead of filing as a member of the GPE consolidated tax group. See Ex. 112, Hardesty Rebuttal at 8-9. For the reasons stated herein, Mr. Brosch's adjustment should be rejected.

373. As explained by Ms. Hardesty, Mr. Brosch proposes to impute cost-free capital that the Company did not receive. KCP&L files as part of a consolidated group of GPE affiliates. Overall, filing as part of a consolidated group benefits the entire group. However, it is the nature of a consolidated filing that any given member may be better off in some years as a result of consolidated filing and worse off in other years.

374. Mr. Brosch has identified and selected a single point in time when KCP&L may be worse off as a result of consolidated filing to perform his hypothetical assessment of available cost-free capital. This hypothetical computation is just that, "hypothetical," and it does not represent the actual economics for the Company. See Ex. 112, Hardesty Rebuttal at 9.

375. Mr. Brosch proposes to compute this amount as if the Company filed and continues to file its tax returns on a "stand alone" basis. He proposes that the amount be computed as if the Company didn't file as a member of the consolidated tax return group. He proposes that this Commission impute an additional amount of cost-free capital equal to the

additional amount that would have been received as of the end of the true up period had KCP&L filed on this "stand alone" basis. He estimates that, on a hypothetical "stand alone" basis KCP&L would have been able to use more of its own NOL carry-forwards and should reduce its NOL carry-forward deferred tax assets in its rate base calculation. See Ex. 112, Hardesty Rebuttal at 14.

376. This adjustment involves one that the Commission has already ruled on in the recent Ameren rate case, Case No. ER-2014-0258. KCP&L believes the Commission correctly decided the issue in that case and would urge the Commission to rule the same way in this proceeding. In the Ameren case, the Commission stated page 22 of the Report And Order:

> Ameren Missouri proposes to use a NOL C[arryforward] it has actually accumulated rather than a hypothetical NOL C[arryforward] proposed by MIEC and supported by Staff, MIEC advocates a policy that arrangements between affiliates should always be interpreted in a manner that benefits ratepayers, even if that results in a detriment to the utility. There is no basis in law or fact for such a policy. The Commission must balance the interest of ratepayers and shareholders to set just and reasonable rates. Ameren Missouri's position is fair and will be adopted.

377. Both utilities (Ameren and KCP&L) used the consolidated NOL, as allocated to the utility, under the applicable TAA in place between all subsidiaries of each consolidated group to compute the NOL ADIT asset included in rate base. See Ex. 112, Hardesty Rebuttal at 18.

378. Mr. Brosch has indicated that he believes that the TAA produces adverse consequences for KCP&L ratepayers and that the "stand-alone" method would produce better results. KCP&L disagrees with Mr. Brosch on this point. Even though the rate base deferred tax asset would be lower using Mr. Brosch's method, it does not represent the true economics of tax deductions and cash received for KCP&L NOLs. In order to remedy this issue, Mr. Brosch cites the Commission rule governing affiliate transactions under 4 CSR 240-20.015 Affiliate

Transactions. In Mr. Brosch's words on page 60, lines 14-16 of his Direct Testimony filed April 2, 2015, the Commission may "employ affiliate transactions policies and safeguards that protect against unreasonable utility transactions with affiliated companies." He proposes that the Commission use the affiliate transaction rules to change the way the NOLs deferred tax assets are computed for KCP&L.

379. The Commission already rejected a similar argument supported by Mr. Brosch in the Ameren rate case, Case No. ER-2014-0258 (Report & Order at 17-22). The Commission specifically held that the affiliated transaction rule does not apply because there is no transaction involved. It should do so again this proceeding.

380. For the reasons stated herein, KCP&L respectfully urges the Commission to reject the proposed adjustments to its Income Tax Expense proposed by MECG witness Brosch.

XIII. CLASS COST OF SERVICE, RATE DESIGN, TARIFF RULES AND REGULATIONS

A. Class Cost of Service

381. KCP&L position: KCP&L does not object to the resolution of this issue proposed by the signatories to the Non-Unanimous Stipulation and Agreement on Certain Issues ("Non-Unanimous Rate Design Stipulation") filed herein on June 16, 2015 as it is consistent with KCP&L's recommendation.

B. Rate Design

382. On June 16, 2015 a number of parties filed a Non-Unanimous Rate Design Stipulation. Because KCP&L objected to the Non-Unanimous Rate Design Stipulation, it is simply a joint statement of position by it signatories. The specific provisions of the Non-Unanimous Rate Design Stipulation to which KCP&L objects are contained in paragraph 4, to-wit: 1) maintaining KCP&L's current $9/month residential customer charge and assigning 100%

of the residential class' portion of this rate increase to energy charges; 2) requiring KCP&L to conduct studies of two-part time of day and real-time pricing tariffs; 3) requiring KCP&L to form a Standby Service tariff working group and file Standby Service tariffs in KCP&L's next rate case; and 4) failure to adjust for KCP&L revenue losses to be occasioned by rate switching due to the rate design changes proposed for the Large General Service ("LGS") and Large Power ("LP") customer classes. KCP&L will address each item in turn below.

C. Tariff Rules and Regulations

1. Return Check Charge: Should the Return Check Charge be Applied to Payment Forms Beyond Checks (Electronic Payments)?

383. KCP&L position: Yes.

2. Collection Charge: Should the Collection Charge be Increased to Reflect the Cost of This Service?

384. KCP&L position: Yes.

3. Economic Development Rider/Urban Core Development Rider: Should the Commission Approve DE's Proposal to Link MEEIA Participation to Receipt of EDR and UCD Incentives?

385. KCP&L position: No.

4. Standby Service: Should KCP&L be Required to Establish a Working Group to Review Its Standby Service Tariff to Ensure That Rates are Cost-Based and Reflect Best Practices?

386. KCP&L position: No (*see* paragraph XIII.B., above).

D. Argument

1. Certain Provisions of the Non-Unanimous Rate Design Stipulation are Unreasonable

(a) Principles of Cost-Based Rates, Fairness and Equity Require Increasing KCP&L's $9/month Residential Customer Charge

387. KCP&L proposes to set the residential customer charge at $25/month which would recover the customer-related and local distribution facilities costs of the residential class

which are fixed and unrelated to the amount of energy used by the customer. See Ex. 134, Rush Direct at 65:9-12. Recovery of these costs through a fixed monthly customer charge is appropriate because, as stated in Staff's Report on Rate Design, the customer charge consists of ". . . costs necessary to make electric service available to the customer, regardless of the level of electric service utilized." See Ex. 202, Staff Report (Rate Design) at 34. Residential customers who are served through a two-part customer/energy charge rate structure (as opposed to non-residential customer who are served through a four-part customer/demand/facilities/energy charge rate structure) misperceive the cost and value of electric service when rates and costs are misaligned. See Ex. 134, Rush Direct at 53-54. Excluding local distribution facilities costs from the residential customer charge means that these costs – which are unrelated to the level of electricity used by a customer – must be recovered through the per kWh energy charge. And when fixed costs to serve exceed fixed rate elements, those "extra" fixed costs recovered through per kWh energy charges are paid by higher than average residential users. Said another way, including the cost of local distribution facilities in the customer charge ensures that each residential customer pays the costs associated with their service and avoids subsidization of lower than average use customers by higher than average use customers. See Ex. 135, Rush Rebuttal at 55:1-17. For these reasons, KCP&L urges the Commission to include the cost of local distribution facilities in the customer charge and adopt the $25/month customer charge proposed by KCP&L.

388. But even if the Commission is unwilling to include the cost of local distribution facilities in the customer charge, KCP&L's current $9/month customer charge cannot be maintained and must be increased to at least $11.88/month.

389. Both Staff and OPC prepared class cost of service studies which establish that KCP&L's residential customer-related costs are at least $11.88/month. See Tr. 1987:11-23; Ex. 247, Corrected Testimony of R. Kliethermes; Ex. 316, Dismukes Direct Correction; and Ex. 317, Corrected Dismukes Sch. DED-12. Staff and OPC's original calculations, which were "corrected" on the last day of hearings, showed that KCP&L's customer-related costs (excluding the costs of local distribution facilities) were $16.49/month. While KCP&L might quibble with the details of Staff and OPC's calculation of customer-related costs (KCP&L's own calculation puts residential customer-related costs, excluding the costs of local distribution facilities, at $13.54/month) (Ex. 134, Rush Rebuttal at 55-56), the simple fact is that no record evidence justifies retaining KCP&L's current residential customer charge of $9/month. Consequently, KCP&L asks that the Commission reject the unsubstantiated $9/month residential customer charge proposed in the Non-Unanimous Rate Design Stipulation[56], and increase KCP&L's residential customer charge to $25/month but no less than $11.88/month.

390. Why does the level of the residential customer charge matter? The evidence shows that, unlike its other customer classes, KCP&L's current residential rate structure consists of only two rate elements: the customer charge and the energy charge. This is unlike KCP&L's current Small General Service ("SGS"), Medium General Service ("MGS"), LGS and LP rate structures which provide for the recovery of fixed costs by way of a fixed demand charge and a fixed facilities charge in addition to the fixed customer charge. See Ex. 135, Rush Rebuttal at 52-53. Staff witness R. Kliethermes agrees that when customer-related costs exceed the fixed customer charge, as undisputed evidence establishes in this record for KCP&L's residential customer class, the energy charges paid by higher than average electricity users subsidize the

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[56] Non-Unanimous Rate Design Stipulation, p. 2, para. 4.

cost of serving lower than average electricity users. See Tr. 455:18 through 457:1. In fact, Staff witness Kliethermes admits that maintaining KCP&L's current $9/month residential customer charge would increase the amount of subsidization currently being provided by higher than average electricity users to the cost of service taken by lower than average electricity users. Id. at 457:6 through 458:17. It is worth pointing out here the fact that KCP&L has many customers with lower incomes who are higher than average electricity users. See Ex.134, Rush Direct at 67:6 through 69:3; Tr. 371:3-24.

391. OPC, DE, and Sierra Club argue that increasing the residential customer charge reduces the incentive of customers to use energy efficiently and impairs their ability to control their electric service bills. What these OPC, DE and Sierra Club arguments leave unsaid is that under KCP&L's $25/month customer charge proposal, a full 80% of the typical residential general use customer's annual bill would still be recovered by per kWh rates. See Ex. 135, Rush Rebuttal at 60:16-22. This would leave ample incentive for residential customers to use electricity efficiently and control their electric bills. So while correct to an extent, these OPC, DE and Sierra Club arguments are obviously not controlling, because if they were, the customer charge would be set at $0. Clearly that is not the case for KCP&L or any other electric utility, for that matter. These OPC, DE and Sierra Club arguments should not persuade the Commission to maintain KCP&L's current customer charge because doing so ignores economic reality in two significant respects and would result in residential rates that are misaligned from the cost of providing service to the disadvantage of customers with higher than average electricity use.

392. First, as discussed above, the undisputed record evidence establishes that KCP&L's residential customer-related costs are at least $11.88/month (which calculation excludes the fixed local distribution costs necessary to make electric service available to

residential customers). Although KCP&L believes that the local distribution facilities costs should be included in this calculation, this represents the bare minimum level of costs to serve each residential customer. See Ex. 134, Rush Direct at 53:12 through 54:5. This Commission has long endorsed the use of cost-based rates and should not abandon that principle in this case. See In re Missouri American Water Co., Case No. WR-2000-281 (Dec. 4, 2007) 2007 Mo. PSC LEXIS 1444 where the Commission stated that "[T]he primary goal of a 'class' rate design structure is to recover costs from those who cause the costs to be incurred." Additionally, a customer charge of $25/month but no less than $11.88/month would be consistent with the trends prevailing in this region and nationally while retaining KCP&L's current $9/month customer charge would run counter to regional and national trends, including rural electric cooperatives in the region whose governance structure gives customers a significant say in the rates charged for electricity. See Ex. 135, Rush Rebuttal at 56:12 through 58:1; Ex. 136, Rush Surrebuttal at 20:15 through 22:22.

393. Second, when fixed costs (like KCP&L's customer-related costs calculated by Staff and OPC to be $11.88/month) are recovered through per kWh rate elements (as would be the case for at least $2.88/month of fixed customer-related costs if KCP&L's $9/month residential customer charge is retained), then by definition each per kWh energy charge recovers more than the cost of providing that kWh of electricity. Setting rates like this would send inaccurate price signals to customers, and each kWh of reduced electricity usage would result in revenue reductions to KCP&L in excess of the cost reductions associated with the reduced electricity usage. See Ex. 135, Rush Rebuttal at 53:20-22. The value of sending accurate price signals to customers at all usage levels should not be underestimated. This is particularly true when it is understood that solar rebates and MEEIA incentives that serve to reduce individual

customers' electricity usage have mostly been utilized by homeowners with the means to do so, such that renters and lower income homeowners with higher than average electricity usage suffer the triple-whammy of 1) subsidizing the customer-related costs of lower than average residential electricity users, 2) paying a greater share of solar rebate costs and MEEIA costs - which, under the $11.88/month Customer Charge calculated by Staff and OPC are recovered on a per kWh basis (Ex. 247, Corrected Testimony of R. Kliethermes at 2-3, para. 7; Ex. 136, Rush Surrebuttal at 26:8-9) – than lower-use residential customers, and 3) being largely unable to avail themselves of solar rebates and MEEIA incentives. See Tr. 420:17 through 421:22.

394. Absent recovering local distribution facilities costs through the customer charge as recommended by KCP&L, to maintain residential rates that bear a reasonable relationship to costs and for reasons of equity and fairness to residential customers of all usage levels, therefore, the Commission must set KCP&L's residential customer charge at no less than $11.88/month and spread the remainder of the residential revenue increase across all energy charges on an equal percentage basis.

(b) Studies of Two-Part Time of Day and Real-Time Pricing Tariffs

395. The signatories to the Non-Unanimous Rate Design Stipulation also request that the Commission order KCP&L to complete studies regarding two-part time of day rates and real-time pricing tariffs within two years.[57] KCP&L opposes this request because time of use rates cannot be implemented effectively with KCP&L's existing metering equipment and billing system. See Ex. 135, Rush Rebuttal at 61:6-16. In addition to the fact that it is premature, KCP&L also opposes this request because these studies may require KCP&L to incur costs properly categorized as rate case expense and signatories to the Non-Unanimous Rate Design

[57] Non-Unanimous Rate Design Stipulation, pp. 2-3, para. 4.

Stipulation have recommended that utility rate case expenses be subject to an automatic 50% disallowance. As a consequence, KCP&L cannot agree to incur rate case expenses, such as those necessary to study two-part time of day rates and real-time pricing tariffs, over and above those it deems necessary to prosecute a rate case.

(c) Standby Service tariff

396. The signatories to the Non-Unanimous Rate Design Stipulation also request that the Commission order the formation of a working group to review KCP&L's Standby Service Tariff and order KCP&L to file a new Standby Service Tariff in its next rate case.[58] First of all, KCP&L already has an approved Standby Service Tariff (KCP&L Tariff Sheet No. 28) and no showing has been made that it is in any way unreasonable or inadequate. KCP&L also opposes this request because this work may require KCP&L to incur costs properly categorized as rate case expense and signatories to the Non-Unanimous Rate Design Stipulation have recommended that utility rate case expenses be subject to an automatic 50% disallowance. As a consequence, KCP&L cannot agree to incur rate case expenses, such as those necessary to form a working group regarding Standby Service and file a Standby Service Tariff in its next rate case, over and above those it deems necessary to prosecute a rate case.

(d) Revenue Losses From Rate Switching Due to LGS and LP Rate Design Changes

397. The signatories to the Non-Unanimous Rate Design Stipulation propose that the position of MIEC/MECG witness Brubaker regarding LGS and LP rate design. Specifically, they propose that:

> . . . the general service LGS and LP second block energy rates shall receive 75% of the applicable class percentage increases and there shall be no increase to the tail blocks of the general service LGS and LP energy rates. Any remaining

[58] Non-Unanimous Rate Design Stipulation, p. 3, para. 4.

> increase in revenue requirement for these classes shall be collected through an equal percentage increase in the customer, demand and first energy blocks.[59]

This proposal recovers the bulk (75%) of the LGS and LP class revenue increase from this case through the second block energy rate for the LGS and LP customer classes, with a much smaller percentage of the rate increase (25%) to be recovered through an equal percentage increase in the customer charge, demand charge and first energy block energy rates. Notably, under the Non-Unanimous Rate Design Stipulation the third block energy rates of LGS and LP customers will not be assigned any portion of the rate increase and will remain at current levels after this case. This means that the very largest of the LGS and LP customers – those with the greatest amount of third block electricity usage – will avoid significant impacts of this rate increase.

398. Although KCP&L does not oppose this aspect of the Non-Unanimous Rate Design Stipulation, the proposal to recover such a significant portion of the rate increase through the second block energy rates of LGS and LP customers poses a substantial likelihood that some LGS and LP customers may be better off from a total electric bill perspective after the rate increase in a different customer class (MGS, LGS or LP) than the class under which they took service during the test year and/or true-up period. Under those circumstances, customers would likely switch to the more advantageous rate schedule. Staff raised this concern in its pre-filed testimony and confirmed the legitimacy of this concern on cross-examination. See Ex. 238, Scheperle Rebuttal at 14:2-14; Tr. 447:16 through 448:9. Such rate switching would be rational and is not prohibited by KCP&L's tariff, but would result in revenue losses compared to the assumptions used currently in the case that all customers will remain in their current customer class after new rates take effect. As a consequence, KCP&L recommends that an adjustment be made to account for revenue losses resulting from rate switching due to the LGS/LP rate design

[59] Non-Unanimous Rate Design Stipulation, p. 3, para. 4.

proposed in the Non-Unanimous Rate Design Stipulation. Assuming that adjustment is made in the true-up phase of this case, KCP&L has no objection to the LGS and LP rate design proposed in the Non-Unanimous Rate Design Stipulation. The Company would note that at the true-up hearing on July 20, 2015, an agreement in principle was announced which should resolve this issue; a settlement document is expected to be filed shortly.

2. Return Check Charge

399. KCP&L has proposed to revise its tariff such that the existing return check charge also applies to other forms of payment in addition to returned checks, such as electronic payments, in the event of insufficient funds. See Ex. 135, Rush Rebuttal at 63:2-20. Staff agrees with KCP&L's proposal (Ex. 233, Murray Surrebuttal at 2:4-8) and no other party has provided testimony or evidence on it. Consequently, KCP&L requests that the Commission approve this proposed tariff revision.

3. Collection Charge

400. KCP&L has proposed to increase its collection charge to $30 to reflect the cost of providing this service. See Ex. 135, Rush Rebuttal at 63:11-19 and Sch. TMR-11. Staff agrees with KCP&L's proposal (Ex. 233, Murray Surrebuttal at 2:9-15) and no other party has provided testimony or evidence on it. Consequently, KCP&L requests that the Commission approve this proposed increase to the collection charge.

4. EDR/UCD

401. DE proposes to ". . . link MEEIA participation to receipt of EDR and UCD incentives." See Ex. 354, Lohraff Direct at 111:10-19. KCP&L's understanding is that DE intends that KCP&L customers must participate in applicable business energy efficiency programs to be eligible for Economic Development Rider ("EDR")/Urban Core Development ("UCD") incentives. KCP&L opposes this DE proposal on a number of grounds. First, in

addition to being administratively unenforceable (i.e., who determines whether a customer has participated in all cost-effective MEEIA programs and how is that determination to be made?), the proposal may violate provisions of the MEIAA statute by seemingly restricting the ability of customers to opt out. See Ex. 135, Rush Rebuttal at 65:1-9. Second, the Commission rejected this DE proposal in the recently issued Ameren Missouri rate order. In re Ameren Missouri, Case No. ER-2014-0258, Report and Order issued April 29, 2015, pp. 82-83. Third, as was the situation with Ameren Missouri, participation in KCP&L's EDR has not been robust, with only four customers currently participating. See Ex. 555, Brubaker Rebuttal at 23:1-11. In this regard, it needs to be remembered that KCP&L's EDR was only recently re-designed, in October of 2013, to make it more functional for customers. See Ex. 136, Rush Surrebuttal at 30:1-8. Adding criteria that would serve to further restrict EDR eligibility and participation, as DE recommends, is not appropriate at this time. KCP&L therefore requests that the Commission reject DE's proposal to require MEEIA participation as an eligibility criteria for EDR/UCD incentives.

XIV. LOW-INCOME WEATHERIZATION

402. The Commission must address two issues:

A. Should the Unexpended Low-Income Weatherization Program Funds Collected Through KCP&L's Base Rates be Used to Offset Any Expenditures Relating to the Low-Income Weatherization Program the Costs of Which KCP&L is Otherwise to Recover Through its MEEIA Recovery Mechanism?

B. Should the Low-Income Weatherization Program Costs be Collected in Base Rates on a Going Forward Basis, or Should Those Program Costs be Collected as Part of KCP&L's MEEIA Recovery Mechanism?

403. Both Staff and Company are in agreement regarding Issue A above. The unexpended low-income weatherization program funds collected through base rates should be used to offset any expenditures relating to the income eligible weatherization program through

KCP&L's MEEIA recovery mechanism. See Staff's Statement of Position, Issue XXVI; Ex. 135, Rush Rebuttal at 43. In this way, the funds will be used for their intended purpose which is the funding of low-income weatherization projects.

404. Issue B is a result of DE's contention that income eligible weatherization programs should only be funded through a utility's base rates. KCP&L's MEEIA program contains its income eligible weatherization program. KCP&L proposes to continue funding and operating this program through MEEIA. By funding the program though MEEIA, the Company is allowed the opportunity to work with the Demand Side Management Advisory Group ("DSMAG") which provides flexibility on how the programs are funded and the ability to work with community groups interested in weatherization issues. See Tr. 1957. For example, the Company recently changed the distribution of funds for the income eligible weatherization program because some of the administering agencies needed more dollars and some agencies needed less. See Tr. 1957. This collaboration with the DSMAG provides KCP&L with flexibility and accountability. While such a system could possibly be set up if the program was funded in rates, there is no provision for it in this case and it would take additional effort to get the community partners to agree to a process. Since this process is already set up and working well in MEEIA, it doesn't make sense for KCP&L to try to replicate it for base rate funding of the low-income weatherization program.

405. The Staff indicates that it is "indifferent" as to whether the income eligible weatherization program stays in MEEIA or is established in base rates. See Tr. 1963. However, Staff witness Imhoff agreed in response to a question from Chairman Kenney that recovery through MEEIA provides additional flexibility on how KCP&L spends the income eligible weatherization program funds. See Tr. 1968. Staff also recognized that that since it has

removed the program costs from base rates, it will need to add an additional amount to its revenue requirement number should the Commission determine that the program should be funded in base rates instead of MEEIA. See Tr. 1967.

406. DE and OPC believe that the income eligible weatherization program is too important to be funded in MEEIA, and so it must be reflected in KCP&L's base rates as it is for other Missouri electric utilities. See Ex. 351, Buchanan Surrebuttal at 4; Ex. 301, Marke Rebuttal at 25. The Company agrees that the program is an important tool but does not believe that just because other utilities fund the program in base rates means that KCP&L must do so as well. As shown above, inclusion in MEEIA provides flexibility and support that does not necessarily exist through base rates. In addition, the Commission may find it is appropriate to have differing methods of funding income eligible weatherization between utilities so that it can assess which method of funding is the most effective. By leaving the program in MEEIA, the Commission has the opportunity to perform a comparison with the data needed to make future policy decisions.

XV. ECONOMIC RELIEF PILOT PROGRAM: SHOULD THE PROGRAM BE EXPANDED TO SERVE ADDITIONAL CUSTOMERS AS PROPOSED BY KCP&L?

A. Statement of the Issue and KCP&L's Position: Should the Program be Expanded to Serve Additional Customers as Proposed by KCP&L?

407. KCP&L position: Economic Relief Pilot Program ("ERPP") should be expanded in terms of both number of customers eligible to be served (from 1,000 to 1,500) and magnitude of monthly support (from up to $50 to up to $65). This expansion would require program funding to be doubled, to $1.26 million annually (50% from customers and 50% from shareholders). Any unspent ERPP funds existing after the program ends should be used to fund the existing Dollar-Aide energy assistance program.

B. Argument

408. KCP&L's proposal to double the funding of ERPP (to $1.26 million annually, 50% from shareholders and 50% from customer rates) to accommodate increasing the number of customers that may be served (from 1,000 to 1,500) and increasing the available bill credit (from $50 to $65) (Ex. 135, Rush Rebuttal at 3:18 through 4:5) is opposed by Staff. See Ex. 200, Staff Report at 136-138. Staff's opposition was based on a faulty premise, however, because Staff mistakenly believed the ERPP had a surplus of unspent funds totaling more than $650,000 when, in fact, unspent ERPP funds totaled approximately $50,000 as of December 31, 2014. See Ex. 135, Rush Rebuttal at 4:12 through 5:4. The unspent ERPP funds as of December 31, 2014 occurred not because of underutilization, but because of temporary administrative issues that KCP&L witness Rush believes have now been resolved such that program funds will be spent. Id. at 5:4-10. Because no meaningful amount of unspent ERPP funds currently exists, it is simply not possible to expand the program without increasing funding as proposed by KCP&L. See Tr. 400:11-22. Although KCP&L initially linked its willingness to provide additional shareholder funding for ERPP to approval of KCP&L's $25/month customer charge request, KCP&L witness Rush agreed that KCP&L was willing to expand the program ". . . even if the service charge were not increased . . ." during the hearing on this issue as a result of discussions with Commissioner Hall. See Tr. 401:2 through 402:7. Notably, Staff did not respond to Mr. Rush's rebuttal testimony explaining the funding status of ERPP and, although Staff continued to oppose KCP&L's proposal to expand ERPP during the hearing, the basis of that Staff opposition, as shown above, was not well founded.

409. As a result of the foregoing, KCP&L requests that the Commission authorize expansion of the ERPP as requested by KCP&L, and include an allowance of $630,000 in

revenue requirement for the customer portion of program funding (KCP&L shareholders will also contribute annually in ERPP funding).

XVI. DECOUPLING: SHOULD THE COMMISSION CONSIDER IN NO. AW-2015-0282 OR A SIMILAR PROCEEDING DECOUPLING OF KCP&L'S REVENUES FROM CUSTOMER USAGE?

A. Statement of the Issue and KCP&L's Position:– Should the Commission Consider, in File No. AW-2015-0282 or a Similar Proceeding, Decoupling of KCP&L's Revenues From Customer Usage?

410. KCP&L position: Yes.

B. Argument

411. Although decoupling (the severing of the link between revenues/earnings and customer usage levels) is not a "live" issue in this rate case because no specific decoupling proposal has been made with respect to KCP&L, it is a ratemaking tool that has been used by many jurisdictions over the past several years. Decoupling can be useful in many different circumstances, but it is particularly effective in eliminating the financial disincentive for utilities to promote energy efficiency inherent in utility rate structures that rely on per kWh energy charges to any significant degree. As discussed by Sierra Club witness Tim Woolf (a former commissioner in Massachusetts), decoupling has been utilized in Massachusetts as a regulatory tool to address numerous changes occurring in the energy industry, from energy efficiency to demand side management to distributed generation to increased emphasis on environmental concerns. See Tr. 432:21 through 433:15. Notably, Mr. Woolf indicated that there had been little in the way of customer response to decoupling in Massachusetts. See Tr. 433:25 through 434:23. Beyond its obvious application in the context of encouraging zealous utility advocacy of energy efficiency by customers, in considering the potential usefulness of decoupling as a ratemaking tool in Missouri, the Commission should also keep in mind a change in circumstance, of relatively recent vintage, that has significantly affected KCP&L's cost of service/revenue

requirement trend over the past several years: slow to no load growth. Whereas utilities like KCP&L typically experienced annual average load growth of 2-3% year (Ex. 118, Ives Direct at 6:13-14) prior to the economic downturn in 2007-2008, KCP&L is now projecting almost no load growth over the next few years (0.9%, 0.2% and 0.2% for 2016-2018, respectively). See Ex. 121, Ives Surrebuttal at 35, fn. 2. When changed circumstances may warrant the use of new tools, like decoupling, it is only responsible and wise for the Commission to recognize those circumstances and examine the potential applicability of such tools.

412. For all of the foregoing reasons, KCP&L urges the Commission to become informed about decoupling as a ratemaking tool that may be useful in its future regulation of KCP&L, whether in Case No. AW-2015-0282 or other suitable proceedings.

XVII. CONCLUSION

413. The issues remaining for decision present the Commission with very clear policy alternatives. KCP&L asks the Commission to recognize the fact that the climate in which it operates has changed, and that regulation must change accordingly. The record evidence establishes that KCP&L's revenue growth has flattened, whereas historically revenues grew 2-3% per year. See, Ex. 121, Ives Surrebuttal at 35, fn.1; and Ex. 118, Ives Direct, p. 6:9-21. The record evidence further establishes that governmental mandates (whether originating from environmental regulators, property tax assessors, NERC or FERC) have required and will continue to require KCP&L to incur cost increases in various areas such as the La Cygne Environmental Project, property taxes, CIP/cyber-security O&M expenses, and SPP transmission fees. Ex. 127, Ling Direct, pp. 2-3; Ex. 113, Hardesty Surrebuttal, pp. 5-6; Ex. 132, Phelps-Roper Rebuttal, p. 3; and Ex. 107, Carlson Rebuttal, pp. 6-8

414. The record evidence also establishes that the combination of these factors has caused KCP&L's earned ROE to fall well short of its Commission-authorized ROE in recent

years and that such earnings shortfalls will continue if rates in this case are based solely on historical information. Ex. 120, Ives Rebuttal, pp. 9-12; and Ex. 130, Overcast Surrebuttal, pp. 2-8 On the basis of this evidence, KCP&L asks the Commission to authorize use of: (1) an FAC, including recovery of SPP transmission fees; (2) a tracker for property taxes; and (3) a tracker for CIP/cyber-security O&M expenses. The use of these regulatory mechanisms, or forecasted costs for the relevant items, is necessary for KCP&L to have a reasonable opportunity to earn its authorized return.

415. Parties opposing the FAC and trackers requested by KCP&L do so in very plain terms. According to them, the traditional Missouri regulatory process works just fine and does not need to change, especially not in the ways proposed by KCP&L which they characterize as expansive.

416. KCP&L's response to this is simple: Look at the evidence. It clearly demonstrates that external factors are significantly affecting KCP&L's operations which require changes in how this Commission regulates KCP&L so that it has a meaningful opportunity to earn its authorized ROE. The evidence also establishes that the regulatory mechanisms proposed by KCP&L are neither untested nor radical, and are narrowly tailored to address concerns historically emphasized in Missouri. See Ex. 130, Overcast Surrebuttal, p. 9. For example:

- If the Commission authorizes KCP&L to use an FAC, it will become the next-to-last utility in the nation to have that ability (Ex. 129, Overcast Rebuttal, Sched. HEO-2, p. 2);
- The FAC proposed by KCP&L does not place 100% of fuel and purchased power costs in the FAC (which is how most jurisdictions across the country treat fuel and purchased power costs) (Id. at Sched. HEO-2, pp. 16-18 and 25);

- The property tax tracker proposed by KCP&L does not provide for automatic rate adjustments to recover such tax increases occurring after rates in this case take effect (unlike property tax riders in many other jurisdictions), but instead requires KCP&L to file a rate case to seek recovery of deferred costs (Id. at pp. 5-8 and Sched. HEO-2, pp. 16-24 and 31-32); and
- The CIP/cyber-security O&M expense tracker proposed by KCP&L does not provide for automatic rate adjustments to recovery cost increases, but instead requires KCP&L to file a rate case to seek recovery of deferred costs. Id.

Under these circumstances, the "just say no" approach of Staff, OPC and MECG to these proposals amounts to little more than obstructionism.

417. When the Commission views the evidence objectively, KCP&L is confident that it will find the "business as usual" approach advocated by the opponents is not working. The evidence clearly shows that it would be unreasonable for the Commission to ignore the continuing trends in future cost increases in the Company's operations, and that the proposals (all subject to mandatory audit and prudence reviews, or a future rate case) relating to an FAC and the trackers are necessary for KCP&L to have a realistic opportunity to achieve its authorized ROE. See Ex. 120, Ives Rebuttal, pp. 9-12; and Ex. 130, Overcast Surrebuttal, pp. 2-8.

418. Because the regulatory mechanisms proposed by KCP&L have been used by regulators across the country and are actually modest when compared with the tools used by utilities in the proxy groups referenced by the cost of capital witnesses, the adoption of these proposals does not require any adjustment to the ROE which the Commission sets in this case. See Ex. 129, Overcast Rebuttal, Sched. HEO-2, pp. 23-24 and 29-32; and Ex. 116, Hevert

Rebuttal, pp. 90-92. In fact, rejection of an FAC for KCP&L would require an increase to KCP&L's ROE of 40 to 60 basis points relative to the proxy group. See Ex. 117, Hevert Surrebuttal, pp. 40-46. Approval of KCP&L's proposed regulatory mechanisms will simply bring KCP&L in line with the other vertically-integrated electric utilities that it competes with for investor capital. As such, the Commission should reject the ROE recommendations of Staff, DOE and MIEC/MECG because the high-end of their experts' analyses all fall well below the 9.83% average ROE awarded by utility regulatory commissions to vertically integrated electric utilities in the first half of 2015. See Ex. 139 (summary of authorized ROEs). Consequently, the evidence in today's market supports Commission authorization of an ROE for KCP&L within the 10-10.6% range recommended by KCP&L witness Hevert. See Ex. 116, Hevert Rebuttal at 95.

419. Likewise, an objective evaluation of the evidence on the CCN pilot program will lead the Commission to conclude that it represents a responsible and innovative approach to meeting emerging customer needs and that it offers a substantial likelihood of benefits for all customers. See Ex. 119, Ives Supplemental Direct, Sched. DRI-2, pp. 2-4; and Sched. DRI-3, pp. 13-20. In light of this, as well as the fact that the Company is requesting rate recovery of approximately 10% of the pilot's capital expenditures made in KCP&L's Missouri service territory, the Commission should find that KCP&L is initially bearing the lion's share of the risks of the program. See Ex. 121, Ives Surrebuttal, p. 63:5-20 and fn. 6; and Tr. 630. Accordingly, it is reasonable to include in customer rates the plant-in-service amounts as of May 31, 2015, along with forecasted O&M costs.

420. Finally, when the Commission objectively evaluates the rate design evidence, it should conclude that there is no support for retaining KCP&L's current customer charge, as

proposed in the Non-Unanimous Rate Design Stipulation submitted by Staff, OPC, MECG and others. Instead, the Commission should find that the evidence requires increasing the charge to no less than $11.88/month (the level of customer-related costs calculated by Staff and OPC, excluding the cost of local distribution facilities necessary to serve customers regardless of usage), and up to $25/month (the level of customer-related costs calculated by KCP&L, which includes the cost of local distribution facilities necessary to serve customers regardless of usage). See Tr. 1987:11-23; Ex. 247, Corrected Testimony of R. Kliethermes; Ex. 316, Dismukes Direct Correction; Ex. 317, Corrected Dismukes Sch. DED-12; and Ex. 134, Rush Direct, at 65:9-12. The Commission should not ignore the evidence showing that the subsidization currently provided by higher-than-average residential electricity users to lower-than-average residential electricity users will only increase if KCP&L's current $9/month residential customer charge is retained. Tr. 455:18 through 457:1 and 457:6 through 458:17.

421. In consideration of the foregoing, KCP&L respectfully asks that the Commission adopt its position on each of the disputed issues.

Respectfully submitted,

/s/ Robert J. Hack

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 22nd day of July, 2015, to all counsel of record.

|s| Robert J. Hack
Attorney for Kansas City Power & Light Company