PUBLIC VERSION

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

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

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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

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

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

Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO") (collectively "the Companies") submit this Reply Post Hearing Brief ("Reply Brief") in the above-captioned proceedings in response to the Initial Briefs filed on March 10, 2011 by Staff of the Missouri Public Service Commission ("Staff"), Missouri Retailers' Association ("MRA"), Missouri Gas Energy ("MGE"), United States Department of Energy ("DOE"), and Praxair, Inc., the Midwest Energy Users' Association, Ag Processing, Inc. a cooperative, and the Sedalia Industrial Energy Users' Association (collectively referred to herein as "MEUA" or "Industrials").

I. INTRODUCTION

1. Throughout this proceeding, KCP&L has demonstrated, and will affirm and substantiate in this Reply Brief, that: (i) KCP&L's actions and decisions concerning the Iatan Projects, including Iatan Unit 1 environmental upgrades, construction of Iatan Unit 2 and Common Plant, were both reasonable and prudent based on industry standards, conditions and

circumstances as they were known, or reasonably should have been known, at the time when such decisions were made; (ii) the Companies' requested Return on Equity is 10.75% based upon a capital structure of 46.29% for Equity, 48.58% for Debt; 0.61% for Preferred Stock, and 4.52% for Equity-linked Convertible Debt is reasonable and consistent with other similarly situated vertically-integrated utilities; and (iii) the Companies' requested revenue requirement is just and reasonable and should be adopted.

II. PRUDENCE

2. Staff has recommended that the Commission order a $186,554,799 disallowance of the total cost of Iatan 2 (or $54,604,310 KCP&L Missouri Jurisdictional share and $33,579,864 GMO share) and a $73,255,114 disallowance of the total cost of Iatan 1 (or $27,434,040 KCP&L Missouri Jurisdictional share and $13,185,921 GMO share).

3. As the Companies stated in their Initial Brief, Staff's disallowance recommendations can be divided into two categories: (1) specific enumerated adjustments in the amount of $51,092,048 for Unit 1 ($19,133,972 KCP&L Missouri Jurisdictional share and $9,196,569 GMO share) and $81,103,094 for Unit 2 ($23,738,754 Missouri Jurisdictional share and $14,598,557 GMO share); and (2) a bucket of "unexplained/unidentified" cost overruns in the amount of $22,163,066 for Iatan 1 ($8,300,068 KCP&L Missouri Jurisdictional share and $3,989,352 GMO share) and $105,451,705 for Iatan 2 ($30,865,556 Missouri Jurisdictional share and $18,981,307 GMO share).

4. The MRA, based upon the analysis of its prudence consultant, Mr. Walter P. Drabinski of Vantage Energy Consulting, LLC ("Vantage"), has recommended that the Commission order a $13,938,795 disallowance for Iatan 1 (or $5,220,079 KCP&L Missouri Jurisdictional share and $2,508,983 GMO share) and a $218,755,000 disallowance of the total cost of Iatan 2 and Common Plant (or $64,029,260 KCP&L Missouri Jurisdictional share and

$39,375,900 GMO share). Mr. Drabinski has reduced his proposed disallowance for Unit 2 by approximately $12 million through the correction of admitted errors that were exposed at the Hearing.

5. Both Staff and MRA have failed to correctly apply the prudence standard to their recommended proposed disallowances. First, Staff makes several allegations of general imprudence on the part of KCP&L, some of which have nothing to do with the actual management of the Iatan Project, and argues that those general allegations are enough to "raise a serious doubt" as to the prudence of the costs of the Iatan Project. Staff has also recommended that all of the costs on the Iatan Unit 1 and Unit 2 construction projects (collectively referred to as the "Iatan Project") over the Definitive Estimate be disallowed, based on KCP&L's alleged failure to adequately respond to two of Staff's Data Requests that asked that KCP&L provide a "list" and explanation of the cost overruns. As a result of KCP&L's failure to "identify and explain" the Iatan Project's cost overruns, Staff asserts that the appropriate penalty should be an unprecedented disallowance of all of the costs over the Definitive Estimate. Staff admits that it has not performed a prudence analysis on these costs, and also ignores that KCP&L has provided all of the documentation and information necessary to identify and explain the cost overruns. Staff never even attempted to perform a prudence audit, and should not be able to use that failure as the basis for its disallowance.

6. MRA's proposed disallowances also suffer from fatal deficiencies. MRA's consultant, Walter Drabinski and his colleagues from Vantage, simply identify areas of alleged imprudence and then provide a proposed disallowance amount that is not tied to those alleged acts. Mr. Drabinski neither establishes that KCP&L in fact acted imprudently through the

submission of substantive and credible evidence, nor does he establish that the acts of alleged imprudence are the cause of the amount of the disallowance.

A. The Applicable Burden of Proof and Application of the Prudence Standard

7. While the parties agree on the general definition of Missouri's prudence standard, the parties do not agree as to how that standard should be applied in this case. As an example, Staff and KCP&L agree that in general, the Commission should presume that the costs of the Iatan 1, Iatan 2 and Iatan Common Plant Rate Base Additions were prudently incurred until a serious doubt has been raised as to the prudence of the investment by a party to the proceeding. However, Staff has carved out two exceptions to this general presumption: 1) affiliate transactions; and 2) costs covered by Section 111.B.1.q. Cost Control Process for Construction Expenditures in the 2005 Stipulation and Agreement in Case No. EO-2005-0329 ("Stipulation" or "Regulatory Plan"). *See* Staff's Initial Brief at p. 6. Staff's carve out for costs covered under Section 111.B.1.q of the Stipulation would render the legal presumption of prudence meaningless. All of the costs for Iatan Unit 1 and Iatan Unit 2 are covered by this section of the Stipulation, which means that Staff is actually arguing that KCP&L is not entitled to any presumption.

8. Regardless of the applicability of the presumption of prudence, Staff argues that it has met its burden of "raising a serious doubt" which would then shift the burden to KCP&L to provide evidence of its prudence. Both MRA and Staff believe raising general allegations of imprudence regarding project management is enough to raise a serious doubt for all Iatan Project costs. However, applicable case law is clear that in order to create a serious doubt, the focus must be on a specific expenditure. *See State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 954 S.W.2d 520, 528-29 (Mo. App. 1997) ("Where some other participant in the proceeding creates a serious doubt as to the prudence of ***an expenditure***, then the applicant

has the burden of dispelling those doubts and proving ***the questioned expenditure*** to have been prudent" (emphasis added)).

1. Staff's Argument Regarding "*Falsus in Uno, Falsus In Omnibus*" is Both Improper and Unfounded

9. Throughout its Initial Brief, Staff repeats the phrase (and calls it a "theme") "*falsus in uno, falsus in omnibus.*" As Staff states in its Initial Brief, this means "false in one thing, false in everything" or "Never trust a liar." *See* Staff's Initial Brief at pp. 11, 18, 19 and 20.

10. Staff's "theme" blatantly demonstrates its bias against KCP&L. Further underscoring this bias are staffs allegations that it is "preparing a complaint to seek monetary penalties from KCPL before the Commission for this willful misconduct." Staff's Initial Brief at p. 20, fn 70. Indeed, Staff reaches as far back as it's the Hawthorn 5 generating unit explosion in an attempt to color the outcome of this rate case. It is well documented that the Hawthorn explosion, while terribly unfortunate, was not KCP&L's fault, did not cost the ratepayers a single dollar, and has no bearing whatsoever on KCP&L's prudence in management of the Iatan Project. *See* Staff's Initial Brief at 17, fn. 62. Staff makes very little effort to conceal its animosity; a predisposition that dramatically colors its audit and the positions it takes in this docket and fatally undermines its recommendations.

11. Staff's "theme" is without foundation. This was demonstrated in KCP&L's initial brief and will be supplemented here. Stated plainly, KCP&L has, complied with each and every obligation under the Stipulation and provided Staff with all of the information it needs to perform its prudence audit.

12. At the Hearing, Staff witness Wess Henderson confirmed that Staff's is supposed to take a neutral role in rate case proceedings:

Q. Okay. Mr. Henderson, as the chief policymaker for the Staff, how would you describe the role of the Commission Staff in a rate case?

A. To provide a fair and balanced outcome to a rate case.

Q. I think you told me in the deposition that you described the role as they're supposed to be a neutral party in the rate case, to provide a fair and equitable solution to a rate case to the Commissioners. Is that -- is that a fair --

A. Correct. Yeah.

Q. -- summary? Is it the role of the Commission Staff to be fair, objective and unbiased in rate cases?

A. Yes.

Q. Is it the role of the Commission Staff to be a strong and aggressive advocate on behalf of ratepayers?

A. No.

See Hearing Tr. p. 2291. Repeatedly calling KCP&L a "liar" indicates that Staff is neither neutral nor unbiased in these proceedings.

13. As stated, Staff has no factual basis for its "theme". On page 18 of its Initial Brief, Staff discusses its "discovery" that KCP&L personnel "improperly charged personal expenses and personal mileage to the Iatan Project." Staff then alleges that KCP&L did not cooperate with Staff in uncovering these items and in fact "attempted to hide" these costs. Staff then asks the question "How can the Commission believe anything that KCPL says once it knows that the Company is willing to permit -- and attempt to hide -- petty frauds of this sort?" There is no evidence that the Company permitted or hid fraud of any kind, and all such statements by Staff are completely unfounded. KCP&L takes all allegations of fraud, big or small, extremely seriously, as does its shareholders and Board of Directors. In fact, Staff continues to make these inflammatory statements despite a two day hearing in front of the Commission on these issues and an Order from the Commission with a finding to the contrary.

14. On March 10, 2010, the Commission formally opened an investigatory docket for the Iatan 1 construction audit and prudence review. *See generally,* Case No. EO-2010-0259 ("0259 Case"). As a part of that docket, the Commission set a two-day hearing, on April 28-29, 2010, directing the participants to "be prepared to provide a complete explanation of every aspect of the on-going construction and prudence audit that was ordered to be completed on December 31, 2009" ("April 2010 Hearing"). One of the main issues presented at the April 2010 Hearing was the question of whether the Companies had engaged in any dilatory or unreasonable practices in responding to discovery during the prudence audit. Staff had suggested that the Companies had violated the Great Plains Energy Code of Ethical Business Conduct by not cooperating with, or frustrating the Staff's audit by withholding information.

15. Evidence presented at the April 2010 Hearing established that the Companies had been diligent in providing discovery and had done nothing to impede Staff's audit. Testimony indicated that approximately 200 people at the Companies had been involved in answering (at that time) over 3000 of Staff's data requests, resulting in the production of approximately 4.5 million pages of information. *See* April 2010 Hearing Tr. at 366-367; 373-375.

16. Specifically with respect to KCP&L's mileage and expense reports, Staff spent an inordinate amount of time focusing on these expenditures. At the time of the April 2010 Hearing, a sampling of 400 then-recent data requests issued by Staff found that more than one quarter, or over 100 separate data requests dealt with expense reports of KCP&L employees, as opposed to only a dozen or so (or only 3%) that related to the expenditures by the major contractors on the Iatan Project. *See* Initial Brief of Kansas City Power and Light Company and Greater Missouri Operations Company, Case No. EO-2010-259 (May 20, 2010) at 30.

17. KCP&L has responded to each of the data requests issued by Staff regarding expenses and mileage, and despite the large number of requests, Staff's investigation into this area has only resulted in a recommendation from Staff of a disallowance of $100,000 for inappropriate charges on a project with approximately $2.5 billion in total costs. Additionally, this $100,000 amount is nothing more than an estimate pulled out of thin air by Staff, who, after an exhaustive review of thousands of pages of expense reports, could actually identify no more than $18,000 in what it deemed to be inappropriate expenses. *See* KCP&L/GMO's Initial Brief at ¶¶190-191. In fact, many of the charges that Staff deemed to be inappropriate were never included in this case and KCP&L is not seeking reimbursement for those costs from its customers for those amounts. KCP&L removed the expenses of all of its executive-level employees from the cost of the Iatan Project prior to the filing of this rate case. *See* Hearing Tr. 521-522. Staff has also continuously raised the issue of a $405 dinner that KCP&L agreed ***three years ago*** should not have been included in its rate case and has removed that charge from the cost of the Iatan Project. *See* April 2010 Hearing Tr. at 302.

18. In its zealous pursuit of what Staff calls "improperly charged personal expenses and personal mileage to the Iatan Project" Staff even questioned whether the trip of Mr. Churchman, who at the time was KCP&L's Vice-President of Construction, to the funeral of the individual that died in the crane accident should be considered as a personal rather than a business related trip. *See* Initial Brief of Kansas City Power and Light Company and Greater Missouri Operations Company, Case No. EO-2010-259 (May 20, 2010) at 31. Staff also requested entrance logs of the power plant to verify whether the president of the company and other company personnel actually traveled to Iatan on specific days in order to cross-check that information with their expense accounts and to request that the Company provide specific

business purposes for each visit. *Id*. These data requests have been extremely time consuming for the Companies and used a substantial amount of resources, which in turn has significantly added to rate-case expense. Nevertheless, KCP&L has been consistently diligent in responding to Staff's data requests throughout both the Iatan Unit 1 and Unit 2 rate cases. Despite all of the time spent on this issue by both Staff and KCP&L, Staff has yet to prove any connection whatsoever between employee mileage charges and whether the Iatan Project was prudently managed.

19. The evidence from the April 2010 Hearing also shows that Staff, despite the prior Order from the Commission, was not prepared to complete its audit of Iatan Unit 1 or fully engage in its audit of Iatan Unit 2. The Commission made it clear on the record that it wanted to hear and dispose of any future disputes and any of Staff's excuses for not completing its audit work that were first aired in the April 2010 Hearing. *See* April 2010 Hearing Tr. at 514-521.

20. After reviewing all of the evidence presented at the April 2010 Hearing, the Commission issued its Order Regarding Findings on July 7, 2010, which unequivocally stated that: "The Commission finds that Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company have not engaged in any dilatory or unreasonable practices in responding to discovery during the construction audit and prudence review of the environmental upgrades to the Iatan 1 generating facility."

21. As a result, it is wholly improper for Staff to call KCP&L a "liar" and imply that the Companies have hindered Staff's investigation on these issues, or that the Companies have permitted and attempted to hide fraud. Staff even goes so far to as the question "What larger and more sophisticated frauds did KCPL commit and carefully conceal in the Iatan Project Accounts." Staff's Initial Brief at 18. There is no evidence whatsoever to suggest ***any*** fraud –

small or large – was committed by anyone at the Companies, and Staff has no basis for even implying that any exist.

22. With respect to Staff's argument regarding gifts, there is no evidence that KCP&L has violated its gift policy or that the acceptance of a $150 jacket or dinner from a vendor was either improper or imprudent. *See* Hearing Tr. at 1375-1378 and 1382-1384.

23. Staff's argument that mileage, distribution of jackets or the cost of dinners somehow translates into whether KCP&L prudently managed the construction of the Iatan Project is completely unfounded and strains credulity.

2. The Cost Overruns from the Definitive Estimate Do Not, By Themselves, Indicate Imprudence By KCP&L and Do Not Raise A Serious Doubt Regarding Iatan Project Costs

24. Staff next argues that the mere fact that the Iatan Project experienced cost overruns over the Definitive Estimate is enough to call the prudence of KCP&L's management of the entire Iatan Project into question. As a result, Staff believes that by simply showing that there were overruns, it has raised a serious doubt shifting the burden to KCP&L to prove the prudence of all of the Iatan Project's costs. KCP&L disagrees with Staff's argument.

25. Staff argues that there have been "significant" cost increases to both the Iatan Unit 1 and Unit 2 Project, but the evidence does not support a conclusion that the increased costs on the Iatan Project were "significant." Based upon Staff's current true-up numbers, Iatan 1's actual costs have exceeded the Definitive Estimate by $73,255,114 or 19.4% and Iatan 2's actual costs have exceeded the Definitive Estimate by $186,554,799 or 11%. This means that for the

entire Iatan Project, actual costs (as of October 31, 2010) have exceeded the Definitive Estimate by 12.6%.[1]

26. Testimony at the Hearing established that KCP&L's record for holding down the project's costs, despite the cost increases from the Definitive Estimate, establishes KCP&L's prudent management. As an example, KCP&L witness Robert Bell stated in his pre-filed testimony:

> While Iatan Unit 2 was in its planning stages and before I joined KCP&L, I experienced the same market forces that other Company witnesses have described; scarcity of human resources, escalating prices for materials and services, long-lead times for engineered equipment and contractors whose risk aversion increased along with their profits. Given that severe economic environment, for Iatan Unit 2 to complete within 3 months of its original target schedule, experience a cost increase of only 16% and perform as well as it has to date indicates to me that this was a well conceived and well managed project from its very earliest stages.

See Hearing Exhibit KCP&L-6, Bell Rebuttal Testimony at p. 1, ln. 19 to p. 2, ln. 7. Other KCP&L witnesses testified that the mere fact that an overrun occurs on a project does not, by itself indicate imprudent management. *See* Hearing Exhibit KCP&L-50, Roberts Direct Testimony at p. 21, ln. 9 to p. 22 ln. 1; Hearing Exhibit KCP&L-44, Meyer Rebuttal Testimony at p. 19, ln. 10-17 ("A negative variance in and of itself is not reflective of imprudent management. Rather, it is just a fact on these types of projects."); Hearing Exhibit KCP&L-46, Nielsen Rebuttal Testimony at p. 23-24 (stating: "The fact that costs increase is not in and of itself evidence of imprudence.").

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[1] The numbers used by Staff are based upon KCP&L's estimate for completion as of March 2010. These numbers are no longer correct. As an example, Staff states on page 15 of its Initial Brief that the overrun for Iatan Unit 2 is $303 million. KCP&L revised this projection in November 2010 and the estimate at completion is now $1,947,620,598, or $262,260,598 over the Definitive Estimate, a 15.5% overrun. However, due to the fact that Staff has only reviewed actual costs, it is appropriate to discuss only the overruns incurred as of the true-up.

27. It is not unusual or unexpected that there were cost increases over the Iatan Project's Definitive Estimate. This fact was explained by various KCP&L witnesses. *See, e.g.* Hearing Tr. at 845 (Bell); Hearing Exhibit KCP&L-6, Bell Rebuttal Testimony at p. 7, ln. 15 to p. 8, ln. 2 (stating that "[d]uring the last decade, experiencing cost increases in the construction industry was the rule, not the exception."); Hearing Exhibit KCP&L-46, Nielsen Rebuttal Testimony at p. 24. In fact, the Commission in the 1985 Callaway Case accepted this as a fact of these types of large, complex projects. *See In Re Union Electric Company et al*., 66 P.U.R.4th 202, 229 (1985) (stating that "[s]ince it is known that changes may occur over time, changes to the definitive estimate are to be expected"). Staff is unreasonably holding KCP&L to the Definitive Estimate without considering reasonable adjustments to the estimate.

28. As will be discussed in more detail later in this Brief, reasonable adjustments to the Definitive Estimate were made by Staff in both the Callaway and the Wolf Creek cases as a part of their prudence analyses. *See, e.g., Union Electric*, 66 P.U.R. 4th at 229-231 (stating that "Staff used the definitive estimate as a starting point and has prepared its own estimate incorporating changes in construction scope and unit rate increases based upon actual experience." The actual costs of the Callaway project were then compared to this "adjusted" definitive estimate.) KCP&L believes that it is appropriate to adjust the Iatan Project's Definitive Estimate as necessary to include scope adjustments (which would include both scope adds and design maturation), pricing increases and delays to the project and other cost increases that were not caused by the imprudent management of KCP&L. Mr. Meyer testified that, "it is a widespread industry practice to periodically reforecast project cost, and those who do so are generally regarded as prudent." *See* Hearing Exhibit KCP&L-43, Meyer Direct Testimony at p. 5, ln. 23 to p. 6, ln 3.

29. In both the Callaway and the Wolf Creek cases, Staff argues that the Commission stated that "the existence of $2 billion in cost overruns raises doubts as to prudence in this case" to support its argument that the mere existence of a cost overrun is enough to raise a serious doubt as to the prudent management of the Project. *See Union Electric,* 66 P.U.R. 4th at 212; *In Re Kansas City Power and Light Company et al.*, 75 P.U.R. 4th 1 (1986). However, in that case, the cost overrun was 175% over the Definitive Estimate, a much different outcome than the 12.6 percent KCP&L has experienced to date on the Iatan Project.

30. If there is a threshold percentage over a Definitive Estimate that suggests, by itself, a level of imprudence, it would be much higher than the cost increase experienced on the Iatan Project. There is no case or applicable statute in Missouri that determines such a threshold. However, Kansas has looked at this issue and determined that the appropriate threshold is 200 percent over the Definitive Estimate. The Kansas prudence statute, K.S.A. 66-128g, specifically states that:

> The portion of the cost of a plant or facility which exceeds 200% of the 'original cost estimate' thereof shall be presumed to have been incurred due to a lack of prudence. The commission may include any or all of the portion of cost in excess of 200% of the 'original cost estimate' [defined as the "definitive estimate"] if the commission finds by a preponderance of the evidence that such costs were prudently incurred.

See K.S.A. 66-128g(b). Contrary to Staff's assertion that a "serious doubt" regarding any general imprudence shifts the burden to all project costs, it is important to note that in Kansas, for all costs up to the 200% threshold, there is still a presumption that all costs were prudently incurred. It is only that portion of costs that exceeds the 200% threshold where the presumption of imprudence is applied.

31. The fact that the Iatan Project's Costs are only 12.6% above its Definitive Estimate is even more evidence of prudent management in light of the fact that the Definitive

Estimate was set at a time that the engineering was only 20-25% complete. *See* Hearing Tr. at 845 (HC). While it was appropriate for KCP&L to set its budget and track its costs based upon this level of engineering, (Hearing Tr. at 852-853) a much more accurate estimate was produced by KCP&L in its 2008 reforecast when engineering was 70% complete. Based upon the current estimate at completion, Unit 2 is only projected to experience a 2% overrun from the 2008 reforecast. *See* Hearing Exhibit KCP&L-25, Giles Rebuttal Testimony at p. 26, ln. 20-22. The Commission is free to determine that the 2008 cost reforecast estimate is a more accurate estimate from which KCP&L's performance should be measured. This was how the Commission in the *Wolf Creek* case determined the baseline for measuring overruns where they felt it was appropriate. *See In Re Kansas City Power and Light Company et al*., 75 P.U.R. 4th at 80 (stating: "Although the commission has previously stated that the definitive estimate represents the best starting point in determining cost overruns, the commission believes in this instance it was reasonable to begin with a later forecast which more accurately reflected the number and the type of man-hours needed. . .).

32. Staff's remedy of seeking all of the costs above the Definitive Estimate be disallowed is an extraordinary and unusual, and is not based on a true prudence analysis of any of those costs. As testified by KCP&L witness Robert Bell at the Hearing:

> Q: Because you've used [the cost control system] or—or seen it used in other projects, do you know if other regulatory bodies have accepted its use?
>
> A: I believe so. I had a similar system down at Florida Power and Light which I used on that EPC Project and I was there for the regulatory hearings on that and so that plant was accepted into base, so yes.
>
> Q: Okay and in that instance, were there any costs that were above what I would refer to as the CBE, the control budget estimate, were any costs that were above that automatically disallowed by the Florida Commission?
>
> A: No, sir. I'd never heard of that before.

Hearing Tr. at 855, ln. 23 to p. 856, ln. 11. Without a prudence analysis, Staff has not met its burden with respect to the cost overruns.

3. General Allegations Made By Staff With No Supporting Analysis Do Not Indicate Imprudence as Causes of the Cost Overruns

33. In addition to Staff's arguments discussed above, Staff identifies other issues that it says are "sufficient to defeat the presumption of prudence." However, in reviewing all of the evidence and testimony presented in this case, including Staff's November 3, 2010 report titled "Construction Audit and Prudence Review – Iatan Construction Project For Costs Reported as of June 30, 2010" ("Staff's November 2010 Report"), Staff does not provide any support for these allegations and simply chooses to ignore the ample evidence to the contrary presented by KCP&L. These allegations include the following:

- KCP&L was delayed in hiring a project manager and allowed a personnel matter to delay the project's completion. As support for this allegation, Staff cites its November 2010 Report. *See* Staff's Initial Brief at p. 15. However, Staff's November 2010 Report provides no analysis or evidence that establishes any details or proof of this allegation. *See* Hearing Exhibit KCP&L-205, Staff's November 2010 Report, at p. 12, ln. 22-26. There is absolutely nothing in the record that supports Staff's allegation that the project was delayed or additional costs were incurred by personnel issues.

- The relationship between KCP&L's Senior Director of Construction and the Iatan Project Manager deteriorated to the point that there was not direct communication between them. Again, Staff provides no analysis or any evidence of delays to the project or costs incurred due to this issue. *Id.*

- KCP&L's decisions to Fast-Track the Project and to implement a "multi-prime" delivery system. KCP&L will discuss this issue in more detail below, but in general does not believe that Staff has provided any evidence with respect to this issue in order to raise a serious doubt.

- KCP&L's decision to hire Schiff Hardin. While Staff's allegations regarding this issue may put KCP&L's Schiff Hardin expenditures at issue, they cannot raise a serious doubt as to the prudence of all of Iatan Project costs. With respect to the Schiff Hardin expenditures specifically, KCP&L believes that it has provided sufficient evidence to prove the prudence of those costs. *See* KCP&L/GMO's Initial Brief at ¶¶136-157.

- KCP&L's "knowing and willful disregard" of its obligations under the Stipulation. KCP&L will discuss this allegation in detail below, but in general denies that it has disregarded any of its obligations under the Stipulation. In fact, KCP&L believes that it has provided Staff with ample information that identifies and explains all of the costs and the cost overruns on the Iatan Project. *See* KCP&L/GMO's Initial Brief at ¶¶ 23-30 and ¶¶ 88-106.

34. With respect to the issue of KCP&L's decision to fast-track the project and to manage the work on a multi-prime basis, Staff simply repeatedly states that it "believes" that these decisions were undeniably imprudent and resulted in cost overruns and documentation problems," but does not provide substantive and competent evidence to support this conclusion. *See* Staff's Initial Brief at p. 17. Staff cites "specific risks" related to fast-track work, though provides no foundation regarding how any of those risks apply to the Iatan Project, nor whether any of these risks actually transpired. *Id*. pp. 16-17. Staff's only support of this proposition are various Schiff Hardin and KCP&L internal audit reports which were performed in 2006 before construction had started. *See* Hearing Exhibit KCP&L-205, Staff's November 2010 Report, at p. 12, ln. 22-26. These reports identified the risks of KCP&L's course of action, which KCP&L considered in its decision-making process and implemented management plans to mitigate these risks. Staff does not provide any evidence that KCP&L failed to mitigate these risks or that these issues ever came to fruition causing increased costs to the Iatan Project.

35. KCP&L, on the other hand, has provided ample testimony regarding its decision to both Fast-Track the Iatan Project and manage it on a multi-prime or "EPC hybrid" basis and why those decisions were prudent. *See* Hearing Exhibit KCP&L-51, Roberts Rebuttal Testimony at p. 19-23; Hearing Exhibit KCP&L-6, Bell Rebuttal Testimony at p. 10-12; Hearing Exhibit KCP&L-44, Meyer Rebuttal Testimony at p. 62-64; Hearing Exhibit KCP&L-19, Davis Rebuttal Testimony at p. 20-32; Hearing Exhibit KCP&L-46, Nielsen Rebuttal Testimony at pp. 184-185; Hearing Exhibit KCP&L-25, Giles Rebuttal Testimony at pp. 27-37.

In fact, KCP&L witnesses Robert Bell and Kris Nielsen both testified that all projects similar to the Iatan Project are performed on a fast-track basis. *See* Hearing Tr. at 824-825; Hearing Exhibit KCP&L-46, Nielsen Rebuttal Testimony at p. 119, ln. 11-13. Staff has not addressed or rebutted this testimony in any way. Instead, Staff resorts to conclusory and summary statements that the fast-track and multi-prime decisions were imprudent.

36. Staff next tries to argue that the fact that KCP&L's witness Dr. Kris Nielsen found two expenditures that he believes to be imprudent is enough for the burden to shift back to KCP&L and require KCP&L to prove, "item by item" the prudency of its expenditures. KCP&L disagrees with this argument. The fact that Dr. Nielsen has raised a serious doubt with respect to two specific expenditures only puts the prudence of those expenditures (the WSI costs and the temporary auxiliary boiler) into question, shifting the burden to KCP&L to provide proof of the prudence of only those specific expenditures, which it has. *See* KCP&L/GMO's Initial Brief at ¶¶180-186. The fact that Dr. Nielsen has questioned the prudence of two expenditures does not mean that KCP&L is now required to prove the prudence of every expenditure on the Iatan Project.

4. In Order For the Commission to Disallow an Expenditure, It Must Find Both That (1) the Utility Acted Imprudently and (2) Such Imprudence Resulted in an Avoidable Cost to the KCP&L's Customers

37. In its Initial Brief, Staff argues that the Commission may disallow costs associated with the Iatan Project without following the two-pronged test set forth in Missouri case law to: (1) evaluate whether the utility acted imprudently (that is, did not act reasonably at the time under the applicable circumstances); and 2) evaluate whether such imprudence was the cause of the harm (increased avoidable costs) to the utility's customers. *See* Hearing Exhibit KCP&L-205, Staff November 2010 Report at p. 10, ln. 1-4; *see also Associated Natural Gas*,

954 S.W.2d at 529. Instead, Staff argues the Commission can side-step this test by making a finding simply that a particular cost is "not of benefit to ratepayers." In support of this statement, Staff cites *State ex rel. Laclede Gas Co. v. Public Serv. Comm'n*, 600 S.W.2d 222, 228-29 (Mo. App. 1980), appeal dismissed, 449 U.S. 1072, 101 S.Ct. 848, 66 L.Ed.2d 795 (1981) and *State ex rel. Southwestern Bell Tel. Co. v. Public Serv. Comm'n*, 645 S.W.2d 44, 55-56 (Mo. App. 1982). However, this is a distinction without merit.

38. KCP&L agrees with the assertion that the Commission has broad discretion to set just and reasonable rates. *Missouri ex. rel. Utility Consumer of Missouri, Inc. v. Missouri Pub. Service Commission* 585 SW.2d 41 (1979). However, "[i]n the setting of just and reasonable rates, the commission must balance investor and consumer interests." *Union Electric,* 66 P.U.R. 4th at 212;). In the balancing of these interests, it is a long-standing proposition that "[a] utility is entitled to a fair return on its prudent investment in property devoted to public service." *Id.*

39. "Reasonableness," in the context of a utility's capital investments is judged based upon a prudence analysis. *Id*. As previously stated, the utility's costs are presumed to be prudently incurred until a party has raised a serious doubt as to the prudence of a particular expenditure. *Id*. Once that showing has been made, then the utility has the "burden of dispelling these doubts and proving the questioned expenditure to be prudent." *Id.* The prudence standard is based upon a reasonable care standard, not on perfection. *Id.* at 213. It is assumed that if costs for a project have been incurred prudently, that they are also a benefit to ratepayers. These are not two separate analyses that can be made independently from one another. Prudent costs are, by definition also a benefit to ratepayers because such costs have been deemed to be necessary for the project. Staff is trying to argue that a determination as to whether a particular cost is a "benefit to ratepayers" means that it or the Commission can disallow certain project costs by fiat

merely by asserting that a particular cost is not a benefit to ratepayers, without having to perform a proper prudence analysis or create the proper nexus between an imprudent act by KCP&L and the alleged additional cost.

40. The *Laclede* case cited by Staff is not applicable because it does not deal with a utility's investments in property. The issue in that case was whether the utility was entitled to recoup from its customers charitable contributions or "goodwill advertising." *See Laclede Gas Co.* 600 S.W.2d at 224-225. In that case, the prudence standard was not applicable, and therefore, the Commission could perform an independent analysis as to whether those costs were a "benefit to ratepayers." The issue in the *Southwestern Bell* case was whether to the commission should have included the cost of "construction work in progress" in the rate base or ordered the telephone company to recover its costs through capitalization. *Southwestern Bell,* 645 S.W.2d at 53. Although the issue is tangentially related to construction, it did not deal with the utility's prudent management of the construction costs but instead, whether the utility could put the costs of construction into rates before the new facility or plant is placed into service. As a result, the *Southwestern Bell* does not support Staff's proposition that it can ignore the prudence standard.

B. KCP&L Has Identified And Explained its Cost Overruns to Staff

1. KCP&L Has Met Its Requirements Under the Stipulation

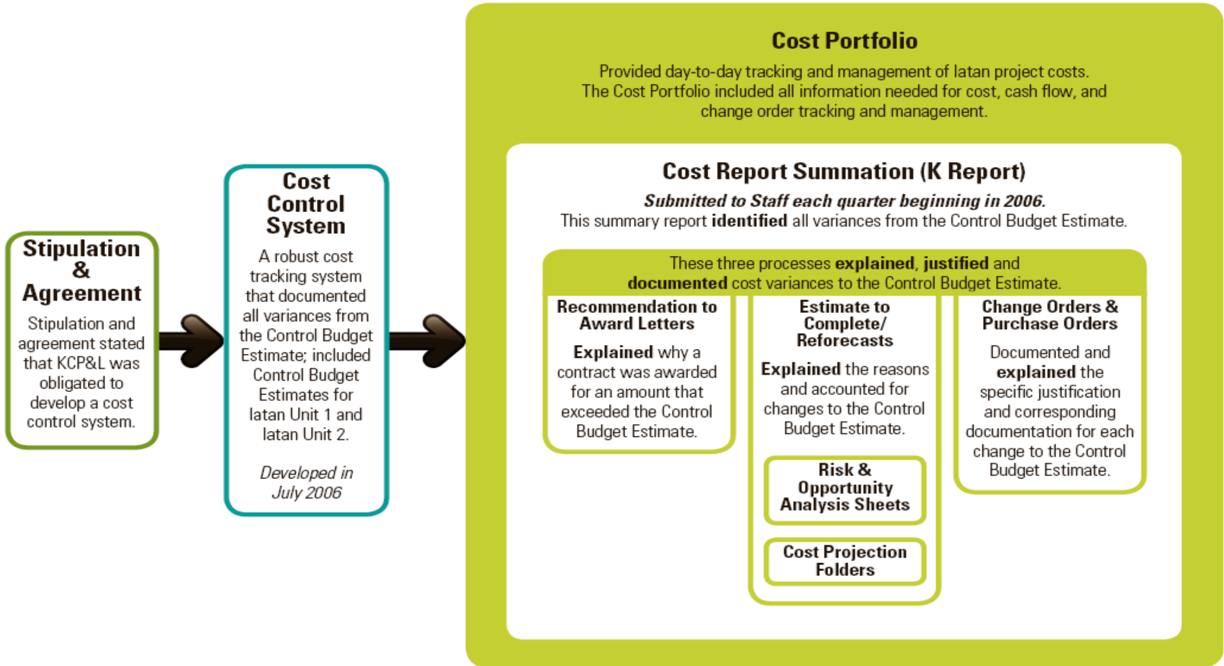
41. Staff argues that KCP&L "ignored" its obligations under the Stipulation (which Staff refers to as the Experimental Regulatory Plan Stipulation and Agreement or "EARP"). In KCP&L/GMO's Initial Brief, KCP&L describes how it met each and every of its obligations under the Stipulation. *See* KCP&L/GMO's Initial Brief at ¶¶17-30. Among the obligations that KCP&L satisfied during the course of the Iatan Project is the much discussed Section III.B.1.q. of the Stipulation requires that KCP&L do the following:

> KCPL must develop and have a cost control system in place that identifies and explains any cost overruns above the definitive estimate during the construction period of the Iatan 2 project, the wind generation projects and the environmental investments.

See Stipulation, Section III.B.1.q. at p. 28.

42. KCP&L provides the Commission with abundant information that shows how it conformed to the plain language of the Stipulation, which requires KCP&L to: (1) develop a cost control system that identifies and explains any cost overruns above the definitive estimate during the construction period; (2) develop a Definitive Estimate; and (3) report on the progress of the Iatan Project based on the Definitive Estimate, which KCP&L has also called its Control Budget Estimate.

43. KCP&L has provided substantial evidence establishing in great detail each step it took to meet its obligations under the Stipulation. *See* KCP&L/GMO's Initial Brief at ¶¶17-30 These various steps are summarized and illustrated in the following chart:



See Hearing Exhibit KCP&L-25; Schedule CBG-2010-03. The following is a reiteration of these various steps.

44. First, KCP&L developed a comprehensive Cost Control System as required by the Stipulation that can both identify and explain the cost overruns of the project. *See* KCP&L/GMO's Initial Brief at ¶25; Hearing Exhibit KCP&L-38, Jones Direct Testimony at Schedule SJ2010-1. Mr. Giles testified that on July 11, 2006, KCP&L representatives presented the Cost Control System to members of the Staff and the other interested parties, and that the meeting went very well and Staff raised no concerns. *See* Hearing Exhibit KCP&L-25, Giles Rebuttal Testimony at p. 22, ln. 17-19.

45. Next, KCP&L developed Control Budget Estimates[2] for each of the Iatan Projects that were based on the best information at the time and included all of the Iatan Project's known scope and pricing of that work. *See* KCP&L/GMO's Initial Brief at ¶26. These Control Budget Estimates for each Project were developed at time when the design for the Iatan Project was 20-25% complete. *See* KCP&L/GMO's Initial Brief at ¶26.

46. With the Control Budget Estimate in place, KCP&L then developed the necessary tools that "identify and explain" not just the cost overruns on the Iatan Project, as required by the Stipulation, but track every dollar spent on the Iatan Project, whether it was a base contract amount or an amount exceeding the Control Budget Estimate. *Id.* at ¶27. These tools were contained in KCP&L's Cost Portfolio, which includes all of the necessary reports that either KCP&L's management or any other interested party would need to review the costs of the Iatan Project. *Id.* at ¶27-28. Within the Cost Portfolio, KCP&L maintained the visibility of the

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[2] Staff agrees that Control Budget Estimates are the same as the Definitive Estimates. *See* Staff's Initial Brief, p. 9. As in KCP&L/GMO's Initial Brief, these terms as used herein are interchangeable.

Control Budget Estimate so that cost progression and velocity could always be compared to KCP&L's original assumptions. *Id.* A summary report called the "K-Report," which KCP&L updates monthly, provides visibility of the actual, committed and estimated completion costs on the Iatan Project, which can, at any given point in time, be compared to the Control Budget Estimate or any of the subsequent cost reforecasts. *Id.* Mr. Archibald includes the following chart in his pre-filed Rebuttal Testimony that summarizes the information tracked in the K-Report on a monthly basis:

Column	Title	Purpose
	Budget	The following columns make up the Project's Budget
A	Control Budget	Itemized listing of each of the contract values and /or estimates that comprised the December 2006 Control Budget Estimate
B	May 2008 Corporate Budget Change	Revisions made to the then-current Control Budget as a result of the May 2008 Cost Reforecast
C	March 2010 Corporate Budget Change	Revisions made to the then-current Control Budget as a result of the March 2010 Cost Reforecast
D	Project Mgmt Internal Transfers	Revisions to the Control Budget resulting from changes to contracting strategy
E	Current Budget	The total of columns A+B+C+D
	Cost Tracking	The following columns identify the current status of actual and committed costs on a line item basis for comparison to the Control Budget and the Current Budget
F	Awarded Costs	All contract and purchase orders and Notice to Proceed values associated with the individual line item
G	Approved Change Orders	All change orders approved to date
H	Current Total	The total of columns F + G

Column	Title	Purpose
	Commitment	
I	% Committed	This column is tracked at the summary level for Procurements and Construction only.
J	Unawarded Costs	Identification of all line items with unawarded amounts
K	Pending Change Orders	Value of approved Change Notices
L	Other	Not used to date
M	Current Forecast Total Cost at Completion	Reflects the current EAC projections at the line item level
N	Actuals including Accruals	Total cost incurred or accrued by the Project to date (through June 2010)

See Hearing Exhibit KCP&L-4, Archibald Rebuttal Testimony at pp. 12-13.

47. These separate categories readily allow for a comparison of all costs over time. As an example, it is possible to compare the budgeted numbers for each of more than 300 tracked line items of cost in Column A with the increases to the Control Budget Estimate with the Project's Current Budget in Column E, which includes the results of the Iatan Project's Cost Reforecasts and budget transfers. It is also possible to compare either Column A or Column E to the Iatan Project's Current Forecast Total Cost at Completion (Column M) or Actuals including Accruals (Column N) to understand the Iatan Project's most current projections and rate of change. *Id.*

48. Thus, through its Cost Portfolio, KCP&L "identifies" each of the cost overruns on a budgetary basis for the Iatan Project. At the hearing, Mr. Downey testified regarding management's use of this tool as a "road map to any costs in excess the original Control Budget

Estimate." Hearing Tr. at 1530. Mr. Downey identified the K-Report as the document management would use to vet cost trends on the Iatan Project in both weekly meetings with the project team and monthly meetings with the EOC. *Id*. at 1531.

49. The Cost Control System explains, documents and justifies each of the cost overruns on the Iatan Project in three ways, as illustrated in the above chart: (1) KCP&L prepares Recommendation to Award Letters that explain why KCP&L awarded its contracts and if, that contract exceeded the amount estimated in the Control Budget Estimate, why the awarded contract required additional funds; (2) KCP&L's Estimates to Complete/Reforecasts of project cost provide detailed explanations for all cost trends, including overruns (and underruns), which are documented in Risk & Opportunity ("R&O") and Cost Projection ("CP") folders; and (3) Change Orders and Purchase Orders that KCP&L issues, which each provide the cost increases to the Control Budget Estimate and the reasons for such increases, as applicable. *See* Hearing Exhibit KCP&L-4, Archibald Rebuttal Testimony at pp. 14-15. Mr. Archibald testifies at length regarding how each of these categories of documents was prepared and used to explain the Iatan Project's cost variances, whether overruns or underruns. *See id*. at 15-40.

50. Staff admits that KCP&L's Cost Control System is robust. While Staff now complains in its Initial Brief that KCP&L had an "inability to identify cost overruns," in Staff's November 2010 Report, Staff admits that KCP&L's cost control system has the ability to track cost overruns: "KCPL's control budget is very detailed with hundreds of line items. It is clear that KCPL has the ability to track, identify and explain control budget overruns." *See* Hearing Exhibit KCP&L-205, Staff's November 2010 Report at p. 37, ln. 10-12.

51. The Cost Control System was not put into place for the sole purpose of complying with KCP&L's obligations in the Stipulation. KCP&L used the Cost Control System and the

reports and documents it generated daily as a management tool for the Iatan Project. Mr. Downey identified the systematic process KCP&L used in informing management of the breadth and nature of the Iatan Project's cost trends related to those cost overruns that were identified by the Cost Control System:

> Q. So as the president and COO, I assume you weren't going through every change order. What -- what document did you use to explain a cost overrun?
>
> A. Well, this document [the K-Report]. And we would vet this with the -- the Staff and -- in the weekly meetings, but we would bring it forward to the executive oversight committee as well monthly.
>
> Q. And did you require the project team to explain cost overruns to you?
>
> A. Absolutely.
>
> Q. And -- and how did you require them to do that? What process did you use?
>
> A. Well, we used those reporting meetings, either the weekly ones or -- and then we would ask for major explanations in the executive oversight. We wouldn't try to go through every -- every one of them, but we'd look at the big picture.
>
> Q. And did they document their explanations in those meetings?
>
> A. They -- we knew the source documents for these, yes. I mean it was -- this was a systematic process that we set up so that we would, first of all, have the right process in place, and then use it and do the analysis which led to actions and decisions. I mean, it was -- there was -- this was a very rigorous process set up at the very beginning. And then, of course, we were reporting not only to ourselves and to our board, but to all of the external audiences; our partners, the Commission Staff. This information was provided I believe month -- I think the K-Reports were provided monthly and certainly then this was summarized at a high level in the quarterly reports.
>
> Q. So last question on this. So then as the president of Kansas City Power and Light, were you able to identify and explain the cost overruns on the Iatan projects?
>
> A. Yes.

Hearing Tr. at 1531, ln. 14 to p. 1533, ln. 1. Mr. Downey's testimony confirms that the Cost Control System was an essential part of KCP&L's prudent management of the Iatan Project.

52. KCP&L recognized that its obligation to "identify and explain" cost overruns under the terms of the Stipulation was not an obligation that existed in a vacuum. KCP&L believed that as part of its obligation under the Stipulation, KCP&L needed to inform Staff and the other signatory parties of the progress on the CEP Projects including the Iatan Project. Mr. Giles, as KCP&L's Vice President of Regulatory Affairs, led KCP&L's negotiation of the Regulatory Plan. In his testimony at the hearing, Mr. Giles described the process that was used by Staff and the Signatory Parties that concluded with the Stipulation. *See* Hearing Tr. at 1153–61. Mr. Giles testified how he interpreted the Stipulation to require KCP&L to be transparent to Staff and the other parties throughout the planning and construction of the Iatan Project:

> Q. There was discussion about the concept of transparency. What does that mean to you?
>
> A. What transparency means to me, and it was inherent in my mind at the time of the 2005 agreement and throughout the construction of the project is that KCP&L would provide ongoing contemporaneous data to the parties, to the Staff as the project was developed and executed so that they knew every decision we were making, when we made it, why we made it. And any cost increase in the scheduled deviations were documented and Staff had access to all of those thought processes and decisions.
>
> Q. Were those provided to the signatory parties in Missouri on a quarterly basis?
>
> A. Yes, we used the quarterly reports to inform all the parties and we subsequently followed up with a face-to-face meeting with all the parties that chose to attend. And in those meetings, we not only went through the quarterly report but gave a real time update as of that very morning of any activities, problems, issues, cost of the plant.

Hearing Tr. at 1160, ln. 19 to 1161, ln. 13.

53. As part of this agreement to be fully transparent, KCP&L also provided Staff with documented evidence of all of its decisions on the Iatan Project that affected the cost of the Iatan

Project. With its Cost Control System, KCP&L has identified and explained not only cost overruns but all aspects of its decision-making, from the initial award of the Iatan Project's contracts to the final change orders issued. This body of documentation proves that KCP&L's expenditures on the Iatan Project were prudent.

54. As will be discussed in the following sections of this Brief, Staff has interpreted KCP&L's obligations under the Stipulation to mean that KCP&L's transparency should have included a number of things – like a "list" of cost overruns in an undefined style and proportion – that were not specified in the Stipulation. Even at this late date, with all of the evidence of this rate case now completed, Staff has yet to articulate what this "list" should have consisted of, or for that matter, a single substantive deficiency with KCP&L's Cost Control System. Staff's understanding of the plain language of the Stipulation and KCP&L's alleged violations of its obligations are unsupported by the record.

2. KCP&L's Cost Control System Conforms to Industry Best Practices

55. KCP&L's Cost Control System captured, recorded and reported KCP&L's prudent management of the Iatan Project. In the construction industry, cost systems such as the one KCP&L employed are built to provide the owner and the contractors visibility to the velocity, or rate of changes, and trends of costs so that overruns can be avoided where possible and mitigated when necessary. Mr. Meyer is an expert in cost systems with nearly 50-years in the construction business who has served as a panelist on approximately 75 Dispute Review Boards on major construction projects on which he decides disputes concerning cost, schedule and management efficacy. *See* Hearing Exhibit KCP&L-44, Meyer Rebuttal Testimony at pp. 2-3. Mr. Meyer concludes that "KCP&L followed good and accepted industry practice by monitoring costs during the course of the Project and reforecasting the CBE at appropriate points." *See* Hearing Exhibit KCP&L-43, Meyer Direct Testimony at p. 5, ln. 17-18. Mr. Meyer

stated that the Cost Portfolio provided KCP&L's management with the information that it needed to make decisions on the Iatan Project. *See id.* at 37. Mr. Meyer placed KCP&L's Cost Control System in the top quartile of those he has seen, and believes this system has allowed for the effective cost management of the Iatan Project. *See* KCP&L/GMO's Initial Brief at ¶97; Hearing Exhibit KCP&L-44, Meyer Rebuttal Testimony at p. 3, ln. 6-10, p. 7, ln. 23 to p. 8, ln. 4.

56. Dr. Nielsen testified that he utilized the Iatan Project's Cost Control System to perform his independent prudence audit. Dr. Nielsen testifies that, "the Staff incorrectly states that KCP&L has neither identified the cost overruns nor provided any explanation of the cost overruns on the Iatan Project, … Pegasus-Global was able track cost overruns back to root causes for those overruns through the project records maintained by KCP&L during the execution of the project." *See* KCP&L/GMO's Initial Brief at ¶98; (citing Hearing Exhibit KCP&L-46, Nielsen Rebuttal Testimony at p. 26, ln. 16-20.)

57. With respect to KCP&L's cost controls on the Iatan Project, Dr. Nielsen also concludes the following:

- KCP&L's Project Controls systems were consistent with industry standards;
- The estimating and budgeting process KCP&L utilized was reflective of reasonable and prudent utility management practice, including the reforecasting the Iatan Project's estimate at completion was evidence of prudent management;
- KCP&L reasonably and prudently implemented and managed a cost system that identified cost variances on the Iatan Project; and
- The cost changes on the Iatan Project compare favorably with other similar facilities constructed in the same time frame.

See KCP&L/GMO's Initial Brief at ¶99 (citing Hearing Exhibit KCP&L-46, Nielsen Rebuttal Testimony at pp. 20-25). KCP&L witness Robert Bell also testified that the Cost Control System is similar to ones he has used on "every job." *See* Hearing Tr. at 855.

3. KCP&L Has Provided Evidence of How the Cost Control System Identifies and Explains Cost Overruns

58. Mr. Meyer was engaged by KCP&L as part of the Schiff Hardin team and his role on the Iatan Project included examining the changes that have been necessary for each Unit's Control Budget Estimate. *See* Hearing Exhibit KCP&L-44, Meyer Rebuttal Testimony at p. 3. Mr. Meyer participated in the oversight of the Iatan Project's base cost estimate that ultimately became the Iatan Project's Control Budget Estimates, each of the Iatan Project's cost reforecasts, and has examined in reasonable detail all of the documents that identify and explain the cost overruns that have occurred on the Iatan Project. *Id.* Mr. Meyer concludes, "While the Iatan Project is very complex, identifying variances based on the cost system is not, and KCP&L's project documentation, which was readily available to Staff, explains the reasons for those variances." *Id.* at 3, ln. 17-19.

59. In his pre-filed Rebuttal Testimony, Mr. Meyer provides an overview of this analysis of the Iatan Project costs, which consisted of: "1) Identifi[cation] from a side-by-side comparison of the Iatan Project's Control Budget Estimate and actual costs the largest cost overruns by line-item; and 2) Drill-down through KCP&L's well-organized back-up documentation on each line item so as to obtain a better understanding of the cause of those overruns." *Id.* at 3, ln. 22 to 4, ln. 8. Mr. Meyer's review has allowed him to conclude that "these variances have not been caused by management imprudence and the aggregate size of these overruns was much lower than overall cost increases that were occurring in the industry at-large at the same time for similar projects." *Id*. Mr. Meyer performed this type of review of the

Iatan Project's cost trends as part of his and Schiff Hardin's oversight of KCP&L's four Cost Reforecasts during the life of the Project. *See id*. at 17, ln. 3-9. Mr. Meyer's analysis is described in detail in his Rebuttal Testimony and attached Schedules. *See id.* at 17-44; Schedules DFM2010-7 to DFM2010-27.

60. The "drill down" that Mr. Meyer describes involved review of the documents described above from KCP&L's Cost Control System. Starting with the K-Report, Mr. Meyer identified the cost overruns from the Control Budget Estimate. He performed his analysis by narrowing the scope of his review to those items that "on their face appear to be overruns or underruns" which he describes as a standard approach. *See id.* ln. 12-14. Mr. Meyer did this by examining the aforementioned K-Report and performing comparisons of the Control Budget Estimate's line items to confirm negative variances without regard to contingency transfers. *See id*. at 18. In other words, Mr. Meyer verified on a line-by-line basis which items cost more than the original estimate anticipated they would regardless of how KCP&L treated it within its Cost Portfolio. Using this method, Mr. Meyer was able to isolate the cost overruns and examine the root cause of each category of costs where an overrun occurs and thus make a determination regarding KCP&L's prudence in association with that overrun. Mr. Meyer then analyzed and applied the Project's unallocated contingency from the Control Budget Estimate in the same manner as employed by the project team to determine the extent of the actual cost overrun on the Project. *See id.*, pp. 18-20.

61. Mr. Meyer then examined the Recommendation to Award Letters, Cost Reforecasts, Change Orders and Purchase Orders to evaluate the explanations provided by KCP&L regarding these overruns. Based on this review, Mr. Meyer describes how he initially identified certain items as "omissions" because they were omissions from the Control Budget

Estimate and were needed for the construction of the Iatan Project. *See id.*, pp. 21-2; Schedule DFM2010-14. These omitted costs are essentially scope additions to the Iatan Project and required an adjustment to the Control Budget Estimate due to the fact that these items "could not have reasonably characterized as avoidable costs due to any action or inaction on the part of KCP&L's management." *See id.*, p. 22, ln. 11-17. After making these adjustments, Mr. Meyer was left with a list of variances in the K-Report that formed the basis of his analysis. *Id.* at 23.

62. Because Mr. Meyer only evaluated the negative variances (the overruns) and did not take into account any of the positive variances (the underruns), the amount of these negative variances actually exceeded the total overrun for the Iatan Project. *See id.* at 24. Then, utilizing the project's documentation in the Cost Portfolio, Mr. Meyer assessed the identified root causes of these cost overruns, and "bucketed" them into the following five categories:

Reason Code	Definition
1	**DESIGN MATURATION**: This category captures work that is related to the original scope of work, and is necessary for the design or construction of the Unit. This could include field changes or necessary design changes based upon information that became known after the original contract.
2	**PRICING ESCALATION/CHANGES**: This category captures increase in material costs or rates from the original contracted amounts.
3	**NEW SCOPE**: This category captures the cost increases associated with work scope that was never anticipated to be a part of a particular contractor's scope.
4	**DESIGN AND/OR FABRICATION ERRORS**: This category captures scope and costs associated with engineering which caused rework in the field by the affected contractor.
5	**COST INCREASES DUE TO SCHEDULE**: This category captures additional costs paid to the contractor due to delays, compression, acceleration or lost productivity.

63. *See id*. at 26. Mr. Meyer identified the methodology for his categorization of the cost overruns he identified, and explained his reasoning for allocation of costs into each of these categories. *See id.,* at pp. 27-29. Mr. Meyer used these reason codes so that these cost items could be understood as part of general categories; however, his analysis required review of the cost items themselves and all related supporting documentation. Mr. Meyer describes the application of these Reason Code Categories his Rebuttal Testimony. *See id*. at 25-44. There are two areas of Mr. Meyer's analysis, Design Maturation and Cost Increases Due to Schedule, that encompass the majority of the Iatan Project's cost overruns that Mr. Meyer examined.

64. Based on his drill down from the Project's documentation, Mr. Meyer assigned change orders to Category 1 (Design Maturation) and the related Category 3 (New Scope) that represented costs "the Owner would have incurred regardless of any act or omission on the part of the Owner." *See id*. at 27, ll. 11-12. Mr. Meyer's analysis of these items was further guided by the concepts of "betterment" or "added value" that are discussed in KCP&L/GMO's Initial Brief. *See* KCP&L/GMO's Initial Brief at ¶44-46. In his Direct Testimony, Mr. Meyer discussed how the Control Budget Estimate was impacted by design maturation:

> **Q: What portions of the Project were most impacted by design maturation in the time period from the December 2006 CBE to June 2008?**
>
> A: For Iatan Unit 2, design maturation most readily impacted areas of the final design that were dependent on the details and workings of the major pieces of plant equipment, functionality of that equipment and operational aspects of that equipment in concert with other systems. Portions of the design that were impacted most by maturation included plant systems such as electrical, water, air, ventilation and mechanical operations. The final design of these plant systems requires significant coordination and a full understanding of the physical size, locations and functionality of adjacent equipment and structural elements.
>
> **Q: Do costs of a project always rise as a result of design maturation?**

> A: I would not say that "costs rise" due to design maturation but rather one's ability to more accurately forecast the end cost of a project is enhanced as the design is completed and that sometimes results in cost projections increasing. As the design matures and the project's scope becomes more defined, the work quantities and related configurations can more readily be determined. This in turn has an effect on work sequences, overall schedule considerations, work-area sharing arrangements, and time-function expenses. Design evolution enhances an owner's understanding of the nature of a project's various cost streams. As that knowledge and understanding is incrementally accrued, the project's contingency should be re-evaluated in light thereof.
>
> **Q: When was the impact of design maturation most apparent on the Iatan Unit 2 Project's costs?**
>
> A: During the period between the establishment of the CBE in December 2006 and the May 2008 Cost Reforecast, the design matured from approximately 20% complete to approximately 70% complete. A large percentage of the R&O's that the Project Team had identified during this period reflected the increase of such design maturity.
>
> **Q: Based on your analysis of the 2008 reforecasted estimate, did the increase in costs from design maturation that the Iatan Unit 2 Project experienced from December 2006 to May 2008 result from any imprudent acts by KCP&L?**
>
> A: No.

See Hearing Exhibit KCP&L-43; Meyer Direct Testimony at p. 26, ln. 15 to p. 27, ln. 21.

65. Because much of the impact of Design Maturation was captured in documentation that KCP&L's Project Team developed in support of the 2008 Cost Reforecast, Mr. Meyer utilized the backup information from this reforecast to measure the impact of the design maturation on the Iatan Project's costs. One example of Design Maturation is the R&O from the Iatan Unit 1 Project's 2008 Cost Reforecast which calls for the inclusion of work on the existing Unit 1 Economizer. *See* Hearing Exhibit KCP&L-44, Meyer Rebuttal Testimony, Schedule DFM-2010-06 and Schedule DFM2010-25. Mr. Meyer identified from the documentation that the work involved cooling the exit gas temperature from the existing economizer to the new SCR

purchased from ALSTOM, an issue that was not known until after the design had matured and it was recognized that these modifications were necessary. *See id.*; also Meyer Rebuttal Testimony at pp. 47-49. Mr. Meyer explained that this R&O item resulted in changes to both the Iatan Unit 1 budget and schedule. *Id.* The change orders that Mr. Meyer assigned in his analysis to this category are similar in nature to the Economizer R&O. Based on this review, Mr. Meyer concluded that the cost overruns on the Iatan Project that were the result of Design Maturation and New Scope, and the explanations provided by KCP&L show that these overruns were prudently incurred.

66. Mr. Meyer's analysis of the effects of Design Maturation on the Iatan Project's costs is further confirmed by the testimony of Mr. Davis, Mr. Archibald, Mr. Giles and Mr. Roberts. *See* Hearing Exhibit KCP&L-4; Archibald Rebuttal Testimony at pp. 16-22 and 25-27; Hearing Exhibit KCP&L-18; Davis Direct Testimony at pp. 9-12 (citing to Schedule BCD2010-01); Hearing Exhibit KCP&L-19, Davis Rebuttal Testimony at pp. 11, 27-28, 55-58 and 99-100; Hearing Exhibit KCP&L-24, Giles Direct Testimony at pp. 20-21; Hearing Exhibit KCP&L-25, Giles Rebuttal Testimony at pp. 12, 26-27 and 35; and Hearing Exhibit KCP&L-51, Roberts Rebuttal Testimony at pp. 21-24.

67. Mr. Meyer's analysis of the Cost Increases due to Schedule followed the same methodology. Mr. Meyer examined the root causes of the costs related to schedule changes, including those to ALSTOM's schedule of work for Iatan Unit 1 and Iatan Unit 2, resulting in the ALSTOM settlement agreements, and found that the explanation provided by KCP&L's project team was sufficient to support that KCP&L managed these changed conditions prudently. *See* Hearing Exhibit KCP&L-44, Meyer Rebuttal Testimony at pp. 31-34. Mr. Meyer's opinion is supported by abundant testimony from Mr. Downey, Mr. Davis, Mr. Bell and Mr. Roberts,

who each testified at length regarding the prudence of the decisions KCP&L made to compensate ALSTOM for revisions to the Iatan Project's schedule. *See* KCP&L/GMO's Initial Brief at ¶108-135.

68. Mr. Meyer's analysis shows that KCP&L's documentation allows for the performance of a prudence analysis of the Iatan Project's cost overruns. Mr. Meyer's analysis was only one of several such analyses that have been performed. MRA's consultant Mr. Drabinski describes how he and his team reviewed the Iatan Project's change orders and purchase orders and determined the basis for his testimony in this case. *See* Hearing Tr. at 1598-9, 1607-8, 1634-6, 1703-4; *see also* MRA Hearing Exhibit Drabinski Direct Testimony pp. 204-213. Mr. Drabinski agreed that the information provided to him was sufficient for his prudence analysis. *See* KCP&L/GMO's Initial Brief ¶21.

69. While KCP&L disagrees with both Mr. Drabinski's methodology and his conclusions, Mr. Drabinski never raised any concerns with KCP&L's Cost Control System. In addition, while he says he did not examine cost, Mr. David Elliott never had any issues with KCP&L's Cost Control System and was able to perform his analysis of the engineering necessity of the change orders with the documents provided by KCP&L. KCP&L/GMO's Initial Brief summarizes Mr. Elliott's review, which included "bucketing" change orders in a very similar manner as employed by Mr. Meyer. *See* KCP&L/GMO's Initial Brief at ¶101-105.

70. Dr. Nielsen concluded that but for two examples, his prudence review of the Iatan Project determined that KCP&L prudently managed the Iatan Project. Dr. Nielsen testified that, "Pegasus-Global was able track cost overruns back to root causes for those overruns through the project records maintained by KCP&L during the execution of the project." *See* Hearing Exhibit KCP&L-46, Nielsen Rebuttal Testimony at p. 26, ln. 16-20.

71. All of the records that Mr. Meyer, Mr. Drabinski, Mr. Elliott and Dr. Nielsen used were supplied to Staff so that it could make its own determination regarding KCP&L's prudence on the Iatan Project. However, the record shows that for myriad reasons and excuses, Staff refused to perform such an audit.

4. Staff Has Failed to Provide Substantive and Competent Evidence That KCP&L Has Failed to Comply With Its Obligations Under The Stipulation

(a) Staff Fails to Articulate Any Deficiencies in KCP&L's Cost Control System

72. Despite all of the evidence that KCP&L has presented, Staff alleges that KCP&L has exhibited a "knowing and willful disregard of its obligations under the Experimental Alternative Regulatory Plan ('EARP')" by failing to identify and explain cost overruns on the Iatan Project. *See* Staff's Initial Brief at p. 19. Staff accuses KCP&L of "gamesmanship" and "obstruction" in what can only be described as Staff's construction of a conspiracy by KCP&L to deprive Staff of its ability to perform a prudence audit. These are spurious and baseless charges, particularly when one looks past Staff's hyperbolic rhetoric and closely examines the precise thing that Staff believes KCP&L concealed. Staff's sole argument with KCP&L's Cost Control System is that KCP&L cannot or will not produce a **list**, one that it believes KCP&L is obligated under the terms of the Stipulation to provide, that somehow identifies and explains the Iatan Project's cost overruns. Nonetheless, despite its claims otherwise, Staff remains unable to indentify the form and format of the "list" and/or what KCP&L failed to do to comply with the Stipulation. *See* KCP&L/GMO's Initial Brief at ¶91*; see also,* Hearing Tr. at 2328-29, 2679-80.

73. Staff claims that, "the record will show that the Iatan Construction Project's cost control system does not identify and explain cost overruns as specified in KCP&L's Regulatory Plan but only provides fragmented information regarding budget variances leaving for Staff to

identify and explain cost overruns." *See* Staff's Initial Brief at p. 25. Staff further claims that KCP&L's cost control system is also "deficient" when compared to those used for Wolf Creek and Callaway. *Id.* Staff adds that KCP&L's tracking of "budget variances is not what the KCP&L Regulatory Plan requires" because, "budget variances and cost overruns are not necessarily the same thing." *Id.* at 39.

74. However, despite these allegations, as noted, Staff admits that KCP&L had the capability to track cost overruns on the Iatan Project. *See* KCP&L/GMO's Initial Brief at ¶29. Staff had full access to the same documents that Mr. Meyer, Mr. Archibald, Mr. Drabinski, Mr. Elliott and Dr. Nielsen had in performing their work. *See* Hearing Exhibit KCP&L-44, Meyer Rebuttal Testimony at p. 3. *See* KCP&L/GMO's Initial Brief ¶20-22; *see also* Hearing Exhibit KCP&L-44, Meyer Rebuttal Testimony at p. 3.

75. Staff's Initial Brief attempts to rewrite history regarding the meaning of the Stipulation. Staff argues that the Cost Control Process was included in the Stipulation "at Staff's insistence" based on Staff's experience in performing its prudence review at the Wolf Creek nuclear generating facility in 1985. Staff seems to think that the Stipulation requires that KCP&L produce a "list" at Staff's request that is in some format different than the information that KCP&L provided to Staff from its Cost Control System over the course of the Iatan Project. However, in response to questions from Commissioner Kenney, Mr. Giles, who participated in the negotiation of the Stipulation, testified at the hearing that Section III.B.1.q. of the Stipulation was KCP&L's suggestion and there was no discussion regarding how cost overruns would be identified and explained. *See* Hearing Tr. at 1132-34. Mr. Giles also stated that, "had we known, I think we would have spent more time defining these terms." *Id.* at 1134, ln. 8-9.

76. Staff's argument that KCP&L's system is "deficient" because it can track cost variances but not cost overruns is particularly odd, because as Mr. Meyer's analysis clearly shows, cost overruns are simply a subset of cost variances. Staff's apparent view is that there is some tipping point at which costs become overruns, and it only wants to know about those that tip the scale past the Control Budget Estimate amount. This was never discussed as a part of or defined as a requirement in the Stipulation. Moreover, what Mr. Meyer and Dr. Nielsen show is determining the cause of the "overruns" requires doing what Mr. Meyer did first – identify which budget items are experiencing an overrun and then look at the explanation of all of the costs that make up that line item and determine whether or not the explanation of those costs supports that the utility was prudent in managing those costs. It is evident from the nature of this dispute that it is very unlikely that even if a "list" were defined by Staff and produced by KCP&L that Staff would agree with KCP&L's definition of such a list, its conclusions as to what is or is not a cost overrun in Staff's mind, or believe that KCP&L was telling the truth as to the cause of the cost increases. As Mr. Blanc testified, "Staff's Iatan Report reads as though it expected the cost control system to be a piece of paper that lists and explains every dollar spent over the December 2006 CBE. That is an overly simplistic notion and does not accurately represent the purpose of a cost control system, which is to manage the costs of project, which KCP&L's system effectively did." *See* Hearing Exhibit KCP&L-8, Blanc Rebuttal Testimony at p. 9, ln. 10-14. Such a list cannot substitute for Staff's own prudence analysis.

77. Staff's argument that it needed a summary list from KCP&L is puzzling in light of some of its other proposed disallowances. As an example, Staff has disallowed over $1 million in Schiff Hardin expenses because KCP&L has not provided the source invoices to Staff, but instead provided invoices that summarized and explained the expenses. Here, with respect to

the Cost Control System, Staff is arguing the opposite—that it shouldn't have to look at the source documents and cannot perform its audit without a document that summarizes the cost overruns.

(b) Staff's Allegation That KCP&L Did Not Comply With the Stipulation Amounts To Nothing More Than A Discovery Dispute On Which Staff Has Slept On Its Rights

78. In its Initial Brief, Staff states that it requested by Data Request a "list and explanation of all Iatan 1 and Iatan 2 cost overruns through April 2010," and that KCP&L failed to provide any such list. The Data Requests referenced by Staff are Data Request Nos. 969 and 970 were issued on July 13, 2010, and to which KCP&L provided its responses to both Data Requests on July 30, 2010. KCP&L's response to these Data Requests is quoted in Staff's November 2010 Report on p. 36. It is this perceived failure by KCP&L to provide Staff a "list" that conforms to the specifications, form and format only known to Staff that is the basis for Staff's proposed disallowance of "unidentified/unexplained cost overruns."

79. Putting aside the fact that Staff has never articulated any clear direction with respect to the form and format of this list, KCP&L was not aware that Staff viewed KCP&L's response to these Data Requests or this list (which was not requested by Staff until mid-July 2010, almost a year and a half after the in-service date of Unit 1) as so central to its case that without it, it could only deem the costs to be "unauditable" until Staff issued its November 2010 Report. In fact, Staff even says that this list was so important that it is "preparing a complaint to seek monetary penalties from KCPL before the commission for this willful misconduct." *See* Staff's Initial Brief at p. 20, fn. 77. Staff, however, has never raised this issue with the Commission or in the monthly status hearings which were put into in place specifically to resolve all discovery disputes.

80. KCP&L contends that it did appropriately answer Data Request Nos. 969 and 970, and that there is no such obligation in the plain language of the Stipulation for KCP&L to provide "a summary list" when it would be redundant to all of the other documentation that was made available to Staff and which were documents developed and maintained in the ordinary course of business.

81. Staff argues that it placed KCP&L on notice of concerns with its Cost Control System. However, KCP&L disagrees with this assertion, and certainly there is no evidence that Staff ever questioned KCP&L's responses to its Data Requests. The only evidence that Staff presents that it put KCP&L on notice of these issues is a letter sent by Counsel for the Staff dated February 21, 2008 to Messrs. Riggins, Fischer and Zobrist in order to discuss six topics, one of which as the Definitive Estimate and the other was the "cost and schedule controls." Staff also cites to its December 31, 2009 Iatan Construction Audit and Prudence Review ("Staff's December 2009 Report") and the April 2010 Hearing. Staff argues that these three events should have alerted KCP&L to the fact that Staff was going to propose the disallowance of all of the overruns because KCP&L did not provide a "list" of cost overruns as requested by Staff. *See* Staff's Initial Brief at p. 26. However, there is nothing in the letter, the December 2009 Report or the April 2010 Hearings that indicated Staff's concern with this issue was so grave as to lead to a disallowance of all of the costs above the Definitive Estimate without any prudence review of those costs by Staff.

82. Staff's February 21, 2008 letter simply requests a meeting to discuss certain topics. Staff, however, omits the fact that KCP&L met with Staff on numerous occasions before and after Staff's February 2008 letter, including seven Quarterly Meetings to discuss the Iatan Project's costs, the Cost Control System and the Reforecasts. *See* Hearing Exhibit KCP&L-25,

Giles Rebuttal Testimony pp. 8-9 and 24-25; Hearing Exhibit KCP&L-4, Archibald Rebuttal Testimony pp. 40-47. Staff never brought its "concerns" to light in these meetings. *Id.*

83. As discussed above, the purpose of the April 2010 Hearing was to have the parties "provide a complete explanation of every aspect of the on-going construction and prudence audit that it was ordered to be completed on December 31, 2009". *See* Commission's Order dated March 15 2010, Case No. EO-2010-259 at p. 3. The main issues in the case were to determine if there were any impediments to Staff's completion of its Unit 1 Audit. The main topics of discussion included whether KCP&L had been cooperative in the discovery process and whether it had provided Staff with all documents necessary to perform its prudence review of Unit 1.

84. The Commission's findings and orders from the April 2010 Hearing were set forth in two orders issued on July 7, 2010, in the Order Regarding Construction and Prudence Audits and the Order Making Findings. In the Order Making Findings, the Commission found that "Kansas City Power and Light Company and KCP&L Greater Missouri Operations Company have not engaged in any dilatory or unreasonable practices in responding to discovery during the construction audit and prudence review of the environmental upgrades to the Iatan 1 generating facility." The Commission did not order KCP&L to provide the Staff with any additional information that it deemed necessary for Staff to complete its audit. In its Order Regarding Construction and Prudence Audits, the Commission set up a very clear forum for Staff to raise any issues it had with respect to discovery disputes or concerns related to its Audits: 1) The Commission ordered monthly status meetings to be attended by all parties and Staff would update the Commission on the status of all audit activity "of any type"; 2) "Any discovery disputes shall be taken up immediately at these hearings. ***Any discovery dispute not timely raised at the status hearing shall be deemed waived***"; 3) The Commission's Executive

Director, Wess Henderson was ordered to file monthly status reports with the Commission. *See* Order Regarding Construction and Prudence Audits at pp. 3-4 (emphasis added.).

85. Of all of the discovery disputes in this case, one would suspect a dispute over whether KCP&L was being honest and forthright in answering two Staff Data Requests regarding what Staff believes is the essence of its case—that KCP&L cannot identify and explain its cost overruns—and the basis of almost $110 million in proposed disallowances for Unit 1 and Unit 2, would have taken center stage with the Commission at some point over the last five years prior to the Hearing. If Staff believed that KCP&L was being evasive in its answers to these data requests, it should have raised this issue with the Commission or filed a motion to compel KCP&L's answers before the Commission. In such event, KCP&L would have either produced the "list" if it were reasonable to do so or would have objected to the duplicative nature of Staff's request because KCP&L had already produced all of the documents needed to identify and explain the cost overruns.

86. Staff has had no compunction regarding seeking relief from the Commission to obtain other categories of documents, including attorney-client privileged information, that Staff has believed to be necessary for it to complete its audit. For example, Staff sought unredacted copies of Schiff Hardin's invoices and memoranda and copies of emails from Mr. Giles to members of Schiff Hardin's team.

87. However, Staff has not raised the issues of KCP&L's responses to Data Requests 969 or 970, that KCP&L had not provided documents in compliance with the Stipulation, or even that Staff felt that its audit activities were being hindered due to lack of documentation on the Iatan Project's costs at any of the quarterly meetings with KCP&L, at any of the status hearings with the Commission, in any of Mr. Wess Henderson's status reports or requests

submitted to the Commission. Instead, Staff sat on its rights and now wants the Commission to find that it was KCP&L's obligation to provide more information above and beyond its previous responses to these Data Requests in the absence of a formal challenge to the sufficiency of such answers. Staff's arguments regarding KCP&L's non-compliance with the Stipulation and that KCP&L didn't answer these Data Requests are only supported by empty rhetoric.

88. Due to the fact that Staff has failed to raise its objections to KCP&L's response to these two Data Requests to the Commission, Staff has waived its right to dispute KCP&L's responses pursuant to the Commission's July 7, 2010 Order Regarding Construction and Prudence Audits, which very clearly states that any discovery dispute not timely raised shall be deemed waived, and cannot now raise that issue in its Post Hearing Brief.

89. Staff has inflated what is nothing more than a discovery dispute over what it believes to be an incomplete and non-responsive answer to two Data Requests into allegations of "deceit" and "gamesmanship". Moreover, this alleged non-response by KCP&L is the only specific evidence Staff cites regarding an alleged deficiency in KCP&L's Cost Control System.

(c) The Cost Overruns are not "Unauditable," Staff Just Simply Chose Not To Audit Them

90. In Staff's Initial Brief, Staff cites prior Commission Orders and cases where the Commission has disallowed costs that it has deemed to be unauditable. Using this precedent, Staff attempts to argue or at least imply that all of the cost overruns on the Iatan Project are unauditable, thereby obviating Staff's requirement under Missouri law to perform an audit in this case. *See* Staff Brief at pp. 23-45.

91. While the Commission has previously approved an adjustment for costs that were deemed to be "unauditable," such a finding has only been made in very extreme circumstances that do not apply here. For example, a category of costs was determined to be unauditable when

the utility: (1) failed to have a cost control system in place; (2) failed to provide documentation that could be broken down or traced to the budget; and (3) failed provide evidence regarding its expenditures. *See Re Kansas City Power & Light Co.*, 48 P.U.R.4th 598, 616 (1982); *see also Re Kansas City Power & Light Co.*, 55 P.U.R.4th 468 (1983) (disallowance of "unexplained" costs premised on a complete lack of any competent and substantial evidence, failure of both the Company and Staff to address specific factors or causes for the changes, and the Commission's conclusion that no one knows to what the unexplained differences are attributed.); Staff's Initial Brief at p. 31. As explained in greater detail in previous sections of this Reply Brief, KCP&L has (1) established and utilized a robust cost control system for the Iatan Project; (2) provided documentation that identifies and explains all costs expended on the project and traces overruns (and underruns) to the Control Budget Estimate; and (3) provided evidence regarding the prudence of its expenditures. Accordingly, all costs are auditable, Staff has just simply refused to audit them.

92. Additionally, the Commission has previously rejected Staff's proposed disallowances for "unauditable" costs. *See Re Kansas City Power & Light Co.*, 48 P.U.R.4th 598, 616. For example, Staff alleged that certain categories of costs in the original construction of Iatan Unit 1 were unauditable based on Staff's conclusion that it was unable to reconcile the costs at issue against any variance report or Staff's definitive estimate.[3] Specifically, Staff asserted the following costs were "unauditable:" (1) the difference between Staff's definitive estimate and the company's definitive estimate; and (2) the project contingency fund. *See id.*

[3] In the referenced case, Staff and the Company disagreed regarding the what estimate was the "Definitive Estimate." Staff's calculation of "unauditable" costs was based on the estimate it asserted was the Definitive Estimate. In rejecting the Staff's claim of "unauditable" costs, the Commission found that the Company's estimate was what should be used as the Definitive Estimate to determine cost overruns. *See Re Kansas City Power & Light Co.*, 43 P.U.R.4th 559, 585 (1981).

The Commission accepted the company's definitive estimate which eliminated Staff's first category of "unauditable" costs and also rejected the Staff's assertion that the contingency fund was an "unauditable" cost.

93. Missouri law does not support Staff's assertion that any portion of the Iatan Project costs are "unauditable." First, as discussed above, KCP&L has provided abundant evidence regarding the creation, implementation, and use of an industry standard cost control system for the Iatan Project and all costs incurred on the Project enabling Staff to audit all of the Iatan Project's costs. *See* KCP&L/GMO's Initial Brief at pp. 12-16. KCP&L has presented detailed information in Quarterly Reports, Quarterly Meetings, and Cost Reforecast documents to the Staff and other Signatory Parties that provide documentation breaking down the Project costs in great detail. Second, KCP&L's Cost Control System accorded Staff access to sufficient information to audit all project costs. Third, Staff does not address how others – namely Dr. Nielsen, Mr. Meyer and Mr. Drabinski – were all able to analyze the costs Staff claims were "unauditable." Based on all of the evidence in the record, it cannot reasonably be concluded that the Iatan Project's Costs are "unauditable." Accordingly, Staff's assertion that there are unauditable costs should be flatly rejected.

(d) Staff Cannot Perform Its Prudence Review By Only Looking At Costs That Are Deemed "Overruns"

94. Staff appears to believe that a cost control system must segregate each expenditure as "within budget," "applied contingency," or as an overrun. *See* Staff's Initial Brief at p. 43. This assumption is not contained anywhere in the Stipulation language and was never communicated to KCP&L by Staff as a requirement. Furthermore, this is not how project expenditures are usually tracked in the industry. Staff essentially argues that this categorization

of costs is necessary because it believes it only needs to look at those specific expenditures that have been labeled as "overruns" to perform its prudence review.

95. Staff's position fails for two reasons: first, Staff completely misunderstands how contingency is applied to project costs. In its Initial Brief, Staff treats contingency as if it is pre-ordained which items it will cover. Mr. Meyer testifies that Project Contingency is an unallocated pool of money that is intended to cover the project's risks as they occur, and that KCP&L's method of distributing contingency on an as-needed basis is standard in the industry. *See* Hearing Exhibit KCP&L-44; Meyer Rebuttal Testimony at pp. 15-16. Staff's suggested methodology for assigning contingency is outside normal industry practice and not how it was done on the Iatan Project.

96. More importantly, Staff's contention that a prudence review can be conducted by only looking at the "cost overruns" is a fallacy. A proper prudence review is not based on what is or isn't covered by contingency or what is classified as an "overrun" as of some point on a calendar but whether an owner has made imprudent decisions leading to costs that could have otherwise been avoided. There could be instances where costs incurred do not appear as an overrun to the budget, though an analysis indicated that the costs were avoidable and clearly incurred because the utility acted imprudently. One could easily think of an example where a utility makes an imprudent decision that resulted in avoidable costs before the project's contingency is exhausted and uses contingency to mask over its mistakes. As a result, a proper prudence review necessarily involves a review of ***all*** of the project's expenses to identify imprudent actions, whether or not such expenses are an "overrun."

97. MRA's consultant, Walter Drabinski testified that a budget estimate should not determine whether a utility's decision to incur a particular expenditure was prudent:

> I don't really know, other than for regulatory purposes, what any of the budget estimates have to do with prudence. You're not prudent whether you're above or below a budget or cost estimate. You're prudent whether you do something that causes costs to rise due to imprudent or unreasonable management. I don't believe that the control budget or definitive estimate should be a starting point. What if the very first dollar on a project was spent imprudently? Are you not able to go back and identify it and deduct it because it's below the CBE?. . . I don't believe there's a real relationship between cost estimates or budgets with the question before this Commission with what was the reasonable or imprudent cost of the project.

Hearing Tr. at 1713, ln. 2-23.

98. Regardless, if Staff doesn't agree, all it had to do was look at the contingency log that KCP&L provides to Staff each month. Staff could have overcome its apparent confusion over the assignment of contingency by doing what Mr. Meyer did in his analysis – apply the contingency in exactly the same manner as KCP&L's project team as part of the prudence review. *See* Hearing Exhibit KCP&L-44, Meyer Rebuttal Testimony at pp. 15-16. If Staff remained confused, all Staff had to do next was call Mr. Archibald, who testified that he opened his calendar every Friday afternoon for Staff to call with questions, or use time in one of the nineteen Quarterly Meetings to discuss this issue. *See* Hearing Tr. at 2216-17; *see also* Hearing Exhibit KCP&L-25: Giles Rebuttal Testimony at pp. 4, 11-12, 38-41. If Staff, after applying contingency as KCP&L did, then wanted to examine only those items that were added to the budget after contingency was applied, it easily could have done so.

99. In fact, KCP&L identified to Staff where contingency would be exhausted when it informed Staff in the second quarter of 2007 of the need to reforecast the Iatan Project's Control Budget Estimate. *See* Hearing Exhibit KCP&L-71, Strategic Infrastructure Investment Status Report, Second Quarter 2007, dated August 15, 2007, pp. 5-7. Mr. Giles testified that he called Mr. Henderson to invite Staff to observe the reforecasting of the Control Budget Estimate that concluded with the 2008 Cost Reforecast, though Staff declined the invitation. *See* Hearing Tr.

at 1091. Had Staff chosen to pay attention to the information KCP&L had provided and come to a few meetings on site with the project team during the spring of 2008, these alleged issues with contingency application could have been answered years ago.

100. Anyone engaged in a prudence audit/analysis needs to review management's prudence from start-to-finish, not just those items that happen to fall outside of the project's definitive estimate. From a public policy perspective, the Commission should reject the method Staff suggests because it would support the artificial inflation of contingency. Based on Staff's analysis, future project owners could attempt to evade a prudence review in rate cases by merely pumping up their Definitive Estimates with so much "contingency" that they would never be in real danger of a cost overrun.

(e) Staff's Argument that Cost Control System does not Report Actual Costs is Wrong

101. Staff also argues in its Initial Brief that "the documentation containing the supposed identifications and explanations does not track to the dollars that KCPL is seeking to include in the rates it charges its Missouri customers." *See* Staff's Initial Brief at p. 25. Staff complains that KCP&L only provided the "raw information" needed to track overruns to the Control Budget Estimate for Staff to create its own explanation. *Id.* at 26. This too is a fallacy. As Mr. Archibald clearly stated in his testimony at the hearing, "Our system allows you to track through every dollar that's spent from cradle to grave and understand where it was spent and wherever the overrun occurred." *See* Hearing Tr. at 2176-77.

102. Had Staff wanted to look at the actual costs that were expended on the Iatan Project, it could have taken the K-Report referred to above, compared the "Control Budget Estimate" column with the column labeled "Actuals Plus Accruals," found the contracts where the actual costs exceeded the Control Budget Estimate amount and reviewed the change orders

associated with these increases. Such a "list" not only exists, as Mr. Archibald stated, it is reported as part of the regular regime in the Cost Portfolio. Perhaps such an exercise would be time consuming, but it is, in essence, no different than what Mr. Elliott did when he reviewed the engineering necessity of the Iatan Project's change orders. *See* KCP&L/GMO's Initial Brief at ¶101-105. In fact, had Audit Staff merely requested a copy of what Mr. Elliott prepared in his work papers, it would have had a "list" that consists of 227 change orders with a value over $50,000 on Iatan Unit 1 and 647 similar change orders on Iatan Unit 2. However, Audit Staff never once sought Mr. Elliott's assistance in preparing this prudence audit other than the one section he authored for Staff's December 31, 2009 and November 2010 Reports, and didn't know that Mr. Elliott had even prepared these "lists." *See* KCP&L/GMO's Initial Brief at ¶86-87.

103. Staff's argument regarding actual cost reporting ultimately fails because a prudence review that depends on knowing the actual costs would clearly be driven by hindsight. There is no disagreement between the parties regarding the prudence standard, which requires the Commission to apply the following two pronged test: (1) evaluate whether the utility acted imprudently (that is, did not act reasonably at the time under the applicable circumstances); and 2) evaluate whether such imprudence was the ***cause*** of the harm (increased costs) to the utility's ratepayers. *See* KCP&L/GMO's Initial Brief at ¶42-48 (discussing Hearing Exhibit KCP&L-205, Staff November 2010 Report at p. 10, ln. 1-4); s*ee also Associated Natural Gas*, 945 S.W.2d at 529. Knowing the actual cost of any item is not relevant to the Commission's determination of prudence. In fact, if the Commission were to accept Staff's argument that merely knowing the amount of the Iatan Project's actual costs were somehow indicative of prudence, wait until all the actual costs were available and every invoice was paid before it could

determine whether management's actions were prudent, such would constitute the ultimate in a hindsight-driven analysis.

(f) Staff's Approach To This Rate Case Is The Root Cause Of Its Failure to Understand the Nature of the Cost Overruns On The Iatan Project

104. In its Initial Brief, KCP&L provided the Commission with considerable detail regarding the Audit Staff's inadequate qualifications for performing a prudence audit, including: (1) Staff's non-compliance with Missouri Law on expert testimony; (2) Staff's non-compliance with GAAS standards as required by the Commission; and (3) how Staff modified its Coordination Procedure prior to this case in a manner that disassociated the Audit Staff from the Utility Operations Staff, thus depriving Audit Staff of the necessary expertise to perform this audit. *See* KCP&L/GMO's Initial Brief at ¶¶72-87. Staff's Initial Brief does not address any of these deficiencies. Instead, Staff focuses on alleged technical failures of KCP&L to meet the Stipulation, all of which are baseless.

105. Staff never addresses why it could not do what so many others – Dr. Nielsen, Mr. Meyer, Mr. Elliott, and even Mr. Drabinski, included – were able to do: use KCP&L's Cost Control System that identifies and explains the reasons for the cost overruns on the Iatan Project.

106. Because Staff has not responded to this allegation, KCP&L can only speculate as to the reasons why Staff, in essence, chose not to carry out what it is charged by the Commission to do. In his hearing testimony, Mr. Featherstone described a system that Staff used to employ that combined both pure auditing of costs with the expertise and judgment of the engineering Staff. *See* KCP&L/GMO's Initial Brief at ¶¶82-84. Mr. Henderson took accountability for the change in this procedure, which ultimately resulted in Staff's unprecedented recommended disallowance of all costs over the Iatan Project's Control Budget Estimate based solely on the recommendation of Mr. Hyneman. *See* KCP&L/GMO's Initial Brief at ¶85.

107. Staff's approach to the audit of the Iatan Project is especially curious in light of Commissioner Gunn's expressed concerns in the April 2010 Hearing:

> But we have an Order saying do an audit, complete—and then we have an order saying complete the audit. We have a brand-new—and this is a Iatan 1, which we've talked about the total cost of this project, which is huge, and we want to get that done because we know that we've got Iatan 2 coming, which is enormous.
>
> And yet it didn't appear to be viewed by anybody that this was an important audit. As a matter of fact, we decided to pull it out of the normal way that we do it hand have one person take it on themselves because other people were so reluctant to take it on because there was chaos, that they weren't—they didn't want to do it.
>
> So we have one person doing a—trying to do an enormous audit with an Order of the Commission that potentially conflicts with a position in the—in a stipulation, which could theoretically, under what Mr. Dottheim pointed out yesterday, unravel a Stipulation & Agreement in an enormous rate case that we spent an entire time on it, and no one is expressing this to the Commission. No one is coming in and saying, we have a problem here.
>
> We are stumbling around in the dark. You're putting Band-Aids on that stuff, trying to use the resources that you have, trying to figure out a way to do it, and no one is coming to us and saying, we don't have the resources to complete this. It's just me. I've got people that don't know what they're doing. Operations and services can't get together and pull their stuff together and come up with a single unified plan on how to deal with this.

April 2010 Hearing Tr. at 515, ln. 18 to p. 516, ln. 22.

108. After the April 2010 Hearing, it does not appear that Staff made any significant modifications to its approach to the Iatan Project audit. Mr. Hyneman performed most of the audit by himself, with some help on a few issues with Mr. Majors, neither of whom have the appropriate experience or expertise. There was no coordination or unified plan between the Audit Staff and Utility Operations Staff. *See* KCP&L/GMO's Initial Brief at ¶¶72-87. Finally, Staff failed to raise any issues it was having in performing its audit or utilizing KCP&L's Cost Control System with the Commission.

109. KCP&L contends that Audit Staff's inexperience and exclusion of the Utility Operations Staff caused or contributed to: (1) Staff's inability to understand KCP&L's Cost

Control System; (2) Staff's ignoring of how KCP&L's Cost Control System complies with the Stipulation; (3) Staff's wild claims regarding KCP&L's "gamesmanship," "obstruction" and "knowing and willful disregard" of its obligations; (4) Staff's inability to understand that conducting a prudence audit does not require, and might actually be harmed by, knowing actual costs; (5) Staff's lack of understanding of contingency and budgeted costs, and its belief that cost overruns can be defined by the Company in the absence of Staff having to perform its own prudence audit; and, (6) Staff's complaints regarding the infamous, undefined "list" – both Staff's unfounded complaint that KCP&L was obligated to produce this "list" and Staff's inability to even define what this list would look like. The result of all of Staff's failures is Staff's unprecedented recommended disallowance of alleged "Unidentified/Unexplained Cost Overruns."

5. A Comparison of Staff's Prudence Audit In The *Wolf Creek* and *Callaway* Cases Highlights Staff's Failure to Perform An Audit In This Case

110. An evaluation of the *Wolf Creek* and the *Callaway* cases provides an interesting comparison of the differences in approach Staff previously employed in its prudence reviews as compared to this case. *See Kansas City Power & Light Co.*, 28 Mo. P.S.C. (N.S.) 228, 290, 75 P.U.R.4th 1 (1986) (regarding the Wolf Creek Generating Station); *Union Electric Company*, 27 Mo. P.S.C. (N.S.) 183, 199; 66 P.U.R.4th 202 (1985) (regarding Callaway Nuclear Plant).

111. In both Wolf Creek and Callaway, the primary Staff witness was Mr. Renken. Mr. Renken was an engineer by trade and prior to joining the Commission Staff, Mr. Renken had accumulated extensive experience in the field of nuclear construction. *See id.* Staff also hired several consultants to help Mr. Renken perform various parts of his analysis, including his determination of prudence. *See id.*

112. The record from *Wolf Creek* shows that Mr. Renken's recommendations to the Commission resulted from his being immersed in that project's documentation. Mr. Renken's work included an audit and analysis of the following information: first hand observations from the project site; Bechtel/engineering monthly reports; change/extra work notices; cost trend reports; the meeting minutes of the SNUPPS/governmental regulatory committee, the construction review group and the technical committee; correspondence between SNUPPS, Bechtel and the utilities; review of the Bechtel computer programs and the NRC audits of Bechtel as well as Bechtel's internal audits of itself; the audit of Staff's consultants, Touche Ross and Company ("Touche Ross") and Project Management Associates, Inc. ("PMA"); the evaluation of Bechtel by the Staff for the Callaway case. *See id*. at 293. Mr. Renken's audit of Callaway included review of engineering documents (ECNs and ETNs) as well as other project documentation that were linked to manhour increases. *See Union Electric Company*, 27 Mo. P.S.C. (N.S.) at 211.

113. Due to the fact that neither project had a robust cost control system or any way to quantify or track the cause of cost overruns, in order to properly measure the companies' prudence, Mr. Renken had to reconstruct the Wolf Creek and Callaway projects' documentation to identify what the projects' would have reasonably cost but for those items he could identify as being imprudent. Mr. Renken's analysis was not based on the enormity of the overrun nor did he give much regard to the projects' Definitive Estimates because the conditions under which the plants were constructed had changed so much. Based on his analysis, for both Wolf Creek and Callaway, Mr. Renken evaluated the reasonable (and thus prudently expended) total direct labor manhours based by also analyzing the additional manhours arising from design changes, late design, a lack of an integrated design and construction schedule or poor management. *See*

Kansas City Power & Light Co., 28 Mo. P.S.C. (N.S.) at p. 293; *Union Electric Company*, 27 Mo. P.S.C. (N.S.) at 212-13. Mr. Renken's testimony established the basis for his calculation, any proposed disallowance of direct manhours for each category, and tied each disallowance to an act of imprudence by the utility. Thus, based on the quality of his analysis and the supporting testimony, Mr. Renken established a nexus between the utility's actions and the associated disallowance. *See Union Electric Company*, 27 Mo. P.S.C. (N.S.) at p. 222.

114. An important difference in both *Wolf Creek* and *Callaway* from this case is that in those cases, the Staff hired consultants with expertise in the industry to analyze the utility's management of the project and perform an analysis of the costs. *See Kansas City Power & Light Co.*, 28 Mo. P.S.C. (N.S.) at pp. 287-88 (Staff hired Touche Ross & Co. and Project Management Associates to perform a review of the effectiveness of SNUPPS/NPI's management of Bechtel); *Union Electric Company*, 27 Mo. P.S.C. (N.S.) at pp. 229-230 (Touche Ross analyzed change/extra work notices). Staff, in this case, voluntarily chose not to hire a consultant despite having a budget to do so. *See* Hearing Tr. at 2288-89. As previously stated, Staff also eschewed the involvement of the Utility Operations Staff, who also have played this role in the past.

115. Staff's assertion that the after-the-fact reconciliation packages in the Wolf Creek and Callaway cases are a superior way to track costs compared to Iatan's Cost Control System is not credible. *See* Staff Brief at p. 25. For both Wolf Creek and Callaway, the only reason that the owners developed reconciliation packages, as noted in the citation quoted by Staff, is that the utility had failed to implement a cost control system to track costs contemporaneously during the project. *See Kansas City Power & Light Co.*, 28, Mo. P.S.C. (N.S.) at 345. As a result, in the context of the rate case, the utility tried to piece together some documentation to explain the

approximately $2 billion in cost overruns. As Staff has pointed out in its Initial Brief, many of these reconciliation packages were found to be deficient by the Commission because they had to be created after the project was completed. *See* Staff's Initial Brief at 30; *Kansas City Power & Light Co.*, 28, Mo. P.S.C. (N.S.) at 345; 75 P.U.R.4th at 93, 106 – 07. ("After-the-fact estimates with wide-ranging accuracy, plugged numbers and pages of unquantified explanations constitute insufficient information from which a determination of reasonableness can be made.")

116. Staff's critique of KCP&L for failing to create reconciliation packages for the Iatan Project is inappropriate, in light of the fact that KCP&L had a Cost Control System that contemporaneously documented and explained cost overruns. KCP&L complied fully with the requirements of the Stipulation and developed a Cost Control System that identifies and explains the Iatan Project's costs and overruns, and which also conforms to industry best practices. Staff's insistence that KCP&L use a far inferior method of explaining overruns on the Project simply highlights Staff's inexperience and expertise in this area. All of the information that would have been in those reconciliation packages were kept contemporaneously on the Project and consistently reported to the Staff and other Signatory Parties in the Quarterly Reports and Quarterly Meetings including the Cost Reforecast Documentation. *See* KCP&L Initial Brief at pp. 12-16.

117. Finally, Staff's proposed disallowance in this case is inappropriate and inequitable when compared to how the utilities managed the Callaway and Wolf Creek projects, and the resulting disallowances in those cases. As the Companies discussed in their Initial Brief, in Callaway and Wolf Creek, the cost overruns approached 200% and the schedule delays were multiple years. *See* KCP&L Initial Brief at ¶¶40-41; Hearing Exhibit KCP&L-8, Blanc Rebuttal Testimony at pp. 16-18. In those cases, there were clear problems of owner control over the

project, such as the lack of integration of the design and construction schedules, accepting the Contractor's data without any verification, and a complete lack of a cost control or tracking system. The Iatan Project is projected to complete only 15-16% above budget once all the costs are in: it was constructed during a challenging economic climate and finished within three months of the original target date, and the evidence establishes that KCP&L actively managed the Iatan Project and put the proper controls in place. *See id.* According to these disparate results, Staff's proposed disallowance is inappropriate.

C. Other Disallowances Proposed by Staff

118. KCP&L has addressed all of Staff's specific disallowances in its Initial Brief and with only a few exceptions, finds no need to reiterate those arguments here with *See* KCP&L/GMO Initial Brief at pp. 52-96. As a general response to Staff's Initial Brief, it is clear that Staff has ignored much of the evidence provided by KCP&L regarding the prudency of these expenditures.

119. As an example, Staff has stated that there was no evidence of KCP&L's analysis quantifying the events associated with the Unit 1 ALSTOM Settlement Agreement. *See* Staff's Initial Brief at p. 48. However, the record establishes that KCP&L has provided Staff with all necessary documents related to the ALSTOM Unit 1 Settlement and that the agreement was prudent. Staff had access to KCP&L project management and senior project staff, and KCP&L has filed extensive testimony regarding this issue in Case No. ER-2009-0089 ("0089 Case"). *See* Davis Rebuttal Testimony (0089 Case) at pp. 3-6 and 19-20 (discussing the Unit 1 Outage and the Tiger Team Schedule and describing meeting with the MPSC Staff that occurred on September 23, 2008 where the Unit 1 Settlement was discussed in detail and relevant documents were provided); Downey Rebuttal Testimony (0089 Case) at p. 17 ln. 20 to p. 20, ln. 23. KCP&L has put forth the testimony of industry experts such as Dr. Nielsen and Mr. Roberts who

have testified that the ALSTOM Unit 1 Settlement was a prudent expenditure on the part of KCP&L, and KCP&L witnesses who testified as to the detailed evaluation that was performed. *See* Hearing Exhibit KCP&L-46, Nielsen Rebuttal Testimony at p. 263, ln. 4 to p. 275, ln. 12; Hearing Exhibit KCP&L-51, Roberts Rebuttal Testimony at p. 7, ln. 15 to p. 12, ln. 12 and at p. 10, ln. 6-18; Hearing Exhibit KCP&L-22, Downey Rebuttal Testimony at pp. 28-29, 34 and at p. 32 ln. 8-10, Schedule WHD2010-05. The evidence establishes that KCP&L fully evaluated the benefits and risks associated with the ALSTOM Unit 1 Settlement Agreement. The evidence establishes that KCP&L's decision to settle with ALSTOM was prudent in light of all of the circumstances and information known to KCP&L's senior management at the time.

120. Staff has raised three new disallowances in its true-up case that KCP&L would like to address in its Reply Brief. These disallowances include: 1) ALSTOM liquidated Damages for Unit 2; 2) Schiff Hardin fees for the Spearville 2 Wind Project and; 3) all Common Costs above KCP&L's original valuation other than costs for a permanent auxiliary boiler. Additionally, KCP&L would like to address the arguments made by Staff in its Initial Brief regarding the Pullman Adjustments, Severance Adjustment and the Affiliate Transaction.

1. Staff has Improperly Added New Categories of Disallowances in its True-Up Testimony

121. Mr. Hyneman's True-Up Testimony is inherently inappropriate because his conclusions are untimely and not factually based. Staff claims that these adjustments are based on new information that was unavailable prior to the issuance of its November 2010 report. This includes the new issues related to the ALSTOM Unit 2 Settlement, Schiff's Fees for the Spearville 2 Project and the Common Cost issue.

122. For example, Staff added ** ** for foregone liquidated damages related to the ALSTOM Unit 2 Settlement Agreement. This is an entirely new disallowance, not

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a "true-up" of costs related to a previously-identified disallowance. *See* Exhibit KCP&L-308, Hyneman True-up Direct Testimony at p. 5. Several months prior to the filing of its November 2010 Report, KCP&L provided Staff with a copy of the Settlement Agreement itself ** [redacted]

[redacted] ** Additional information with respect to further modifications to the Provisional Acceptance Date were provided to Staff well in advance of its November 2010 Report, and should have been included as a part of its prudence audit, not the true-up.

123. Additionally, Staff has used its true-up testimony to provide additional testimony to supplement its disallowance for the ALSTOM Unit 2 bonus amounts. As stated by Mr. Downey in his Rebuttal Testimony:

> Staff fails to provide any analysis of the complex commercial issues underlying the ALSTOM Unit 2 Settlement Agreement and its proposal to simply defer the issue in its entirety to the true-up case is inappropriate, as the dollar amount is fixed at this time and the prudence of our decision can be fully weighed by the Commission in this case. By the time of the hearing, all of the bonus payments under this agreement will have been earned by ALSTOM even if they have not been technically invoiced and paid.

Downey Rebuttal Testimony, p. 46, ln. 17-23.

124. Staff's new disallowances with respect to Schiff's fees on the Spearville 2 Wind Project and additional Common costs should also be rejected by the Commission as untimely. Staff has not shown that it did not have access to information regarding these costs prior to its November 2010 Report.

2. ALSTOM Unit 2 Liquidated Damages

125. In Staff's True-Up Direct Testimony, Mr. Hyneman's position on the Iatan Unit 2 Settlement is identical to the argument Staff articulated regarding alleged "foregone" liquidated damages emanating from the Iatan Unit 1 settlement with ALSTOM in Staff's November 2010

Report. *See* KCP&L/GMO's Initial Brief at pp. 61-64. Staff's position is nothing more than idle speculation and hindsight, and not based on any understanding or acknowledgement of the facts regarding the Iatan Project.

126. Mr. Hyneman alleges, "Since Alstom's performance compared to contractual requirements were likely the cause of some if not most of these incremental costs, KCPL should have assessed and collected these costs from Alstom under the liquidated damages provision of the Alstom-KCPL contract. KCPL decided not to make such an assessment. If Alstom's performance did not meet its contract requirements and KCPL failed to protect itself from such performance by taking advantage of its rights under its contract with Alstom, KCPL was unreasonable/inappropriate in its conduct and should bear the costs incurred." *See* Exhibit KCP&L-308, Hyneman True-up Direct Testimony at p. 3. Mr. Hyneman's testimony is transparently based on speculation and hindsight and reveals that Staff has not performed any analysis of KCP&L's prudence regarding its decision to engage in the Settlement Agreement with ALSTOM. Mr. Hyneman also states, "If some or all of the delay in project completion was not the fault of Alstom, KCPL should determine who was at fault and hold that entity (including itself) responsible for these incremental Iatan Project costs." *See* Hearing Exhibit KCP&L-308, Hyneman True-up Direct Testimony at p. 3, ln. 17-23. Mr. Hyneman clearly admits that he does not know the basis of this agreement, or whether ALSTOM, KCP&L or anyone else for that matter was "at fault."

127. The circumstances surrounding the ALSTOM Unit 2 Settlement Agreement are discussed in detail by several KCP&L Company witnesses, including Mr. Downey, Mr. Roberts and Dr. Nielsen. *See* Hearing Exhibit KCP&L-22, Downey Rebuttal Testimony at pp. 39-47; Hearing Exhibit KCP&L-51, Roberts Rebuttal Testimony at pp. 12-18; and Hearing Exhibit

KCP&L-46, Nielsen Rebuttal Testimony at pp. 275-285. This testimony identifies KCP&L's analysis for its decision to settle with ALSTOM as well as adjust the milestone dates in the Contract.

128. Mr. Hyneman also alleges, "Since Alstom did not obtain Provisional Acceptance of Iatan Unit 2 until September 23, 2010 when it was required by contract to obtain this project milestone on June 1, 2010. Because of this delay in project completion, KCPL incurred costs and harm in the amount of approximately ** [redacted] **" *See* Hearing Exhibit KCP&L-308, Hyneman True-up Direct Testimony at p. 3, ln. 12-15. This is the identical argument that Staff advances in Staff's Report regarding the "forsaken" liquidated damages on the Iatan Unit 1 Project, and should be rejected for the same reasons KCP&L's witnesses have previously articulated. *See* Hearing Exhibit KCP&L-112, Giles True-Up Rebuttal Testimony at p. 5-12; Hearing Exhibit KCP&L-22, Downey Rebuttal Testimony at p. 36, ln. 12 to p. 38, ln. 2; Hearing Exhibit KCP&L-19, Davis Rebuttal Testimony at p. 59, ln. 3 to p. 60, ln. 7; Hearing Exhibit KCP&L-51, Roberts Rebuttal Testimony at p. 11, ln. 6 to p. 12, ln. 12; and Hearing Exhibit KCP&L-46, Nielsen Rebuttal Testimony at p. 266, ln. 11 to p. 268 ln. 16; KCP&L-205, Staff Report at p. 59, ln. 15-16; *see also* KCP&L's Brief at pp. 61-64. Mr. Hyneman's argument represents nothing more than idle speculation and hindsight.

129. Staff ignores KCP&L's evidence to reach its conclusion. Staff's whole argument is premised on the pure speculation that KCP&L would have been able to collect liquidated damages from ALSTOM and that if KCP&L had not changed the contractual milestone date that ALSTOM still would have reached Provisional Acceptance on September 23, 2010, rather than accelerate to meet an earlier date.

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130. Furthermore, KCP&L witness Chris Giles also testified in his True-Up Rebuttal Testimony that although KCP&L technically declared that ALSTOM met the Provisional Acceptance Date on September 23, 2010, it could have done so much earlier, but chose not to for valid commercial reasons:

> Technically, KCP&L could have declared that ALSTOM had achieved Provisional Acceptance on this date, but chose to rely on some technical language in the Contract so that KCP&L could wait until after ALSTOM could show that the unit could be started up with no problems after an extended outage. This was to ensure that there were no latent problems in ALSTOM's work before KCP&L released ALSTOM from liability for liquidated damages. As a result, KCP&L considers the "commercial operation" date (the definition on which Provisional Acceptance is based) of the Iatan Unit 2 plant to be August 26, 2010, or 67 days earlier than ALSTOM's [revised] contractual date. It is important to note that KCP&L has always targeted Provisional Acceptance for the Project in the "Summer of 2010", which was achieved. KCP&L does not consider the Iatan Project to have been "late."

Hearing Exhibit KCP&L-112, Giles True-Up Rebuttal Testimony at p. 10-11. This shows that Mr. Hyneman's analysis of this issue relies both on speculation and a misunderstanding of the applicable facts.

131. KCP&L summarized the notice it provided to Staff of the evolution of the Unit 2 Guaranteed Provisional Acceptance milestone date in response to Data Request 658 which stated in relevant part:

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132. Staff cites to Data Request 658 as support for its argument about foregone liquidated damages for Unit 2. However, as listed above, KCP&L's response to Data Request 658 simply explains the evolution of the contractual date for Unit 2 Provisional Acceptance.

133. Because Staff's proposed disallowance is a calculation regarding what KCP&L "could have" potentially collected had the original contractual date of June 1, 2010 remained in effect, the disallowance is not only highly speculative but factually irrelevant. ALSTOM was not required to nor would it have any reason to attempt to meet (much less spend additional money to meet) a contractual date that is no longer valid. *See* Hearing Exhibit KCP&L-112, Giles True-Up Rebuttal Testimony at p. 6; Hearing Exhibit KCP&L-22, Downey Rebuttal Testimony at p. 36-38; Hearing Exhibit KCP&L-19, Davis Rebuttal Testimony at p. 58-60;

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Hearing Exhibit KCP&L-51, Roberts Rebuttal Testimony at p. 11-12; and Hearing Exhibit KCP&L-46, Nielsen Rebuttal Testimony at p. 266, ln. 11 to p. 268 ln. 16. At the time of the Unit 2 Settlement Agreement, no liquidated damages had accrued, and as a result, KCP&L had no contractual right to collect such damages. ALSTOM met the contractually required Guaranteed Unit 2 Provisional Acceptance date and, as a result, no liquidated damages were applicable.

3. Schiff Hardin Fees for the Spearville 2 Wind Project

134. Staff has proposed disallowance of ** ** for all of Schiff Hardin's legal fees arising from the Spearville 2 Wind Project. Mr. Hyneman identifies five law firms that provided work on the Spearville project, but offers no analysis or rationale for the necessity or appropriateness of the legal services for any of the firms who provided legal services to KCP&L in association with the Spearville 2 Wind Project. Mr. Hyneman's testimony supporting this proposed disallowance is improper and is not based upon any review of the services provided by Schiff Hardin on this Project. *See* Hearing Exhibit KCP&L-308, Hyneman True Up Direct Testimony at pp. 14-16. Mr. Hyneman provides no evidence at all, let alone evidence that raises a serious doubt regarding KCP&L's prudence in utilizing Schiff Hardin's services for the Spearville 2 Wind Project. *See* KCP&L-Exhibit 112. Giles True Up Rebuttal Testimony at pp. 13-15.

135. The only basis Mr. Hyneman cites for exclusion of Schiff Hardin's fees is: (1) ** **, and (3) the concerns raised regarding Schiff Hardin's sole source award for work on the Iatan Project should also support a disallowance of fees associated with the Spearville Wind Project. *See* Hearing Exhibit KCP&L-308, Hyneman True Up Direct Testimony at pp. 14-16.

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136. Schiff Hardin provided legal services on the Spearville 1 Project which was successfully completed on time and budget. Staff proposed no disallowance for Schiff's fees as part of the Rate Case that addressed Spearville 1. However, with respect to many of the same services that Schiff Hardin provided on the Spearville 2 Project, Staff now proposes a 100% disallowance of all fees.

137. KCP&L has demonstrated that using Schiff Hardin to provide legal services, whether on this work or the Iatan Project, was prudent because of Schiff Hardin's qualifications to perform such work. *See* KCP&L/GMO's Initial Brief at ¶¶146-154. Additionally, Company witness Giles testified that Schiff's services directly contributed to the successful completion of the Spearville 2 project and were cost effective. *See* Hearing Tr. at 4618, ln. 20-24. According to Mr. Giles, Schiff's services resolved a complicated contract dispute involving 32 wind turbines at a very low cost and with Schiff's assistance, the project was constructed on time and on budget. *See id.*

138. Second, Staff offers no evidence to support its recommended disallowance. Staff did not evaluate the nature or extent of the services that Schiff Hardin provided on the Spearville 2 Project. Similarly, Staff offers no testimony regarding the typical range of legal fees associated with conducting a mediation. As stated, Staff relies solely on its allegations regarding the impropriety of sole sourcing legal services for the Iatan Project as its basis to support a disallowance for services performed by an entirely different project. *See* Hearing Exhibit KCP&L-308, Hyneman True Up Direct Testimony at pp. 14-16.

139. Finally, Staff's position that the portion of fees not excluded is the "level of charges [necessary] to this type of project" is completely without basis. *See* Hearing Exhibit KCP&L-308, Hyneman True Up Direct Testimony at pp. 16. There is nothing in the record that

establishes that Staff even reviewed or analyzed what services were performed, let alone what services were necessary, and there is certainly nothing in the record that shows that KCP&L's internal legal or the outside firms who performed work were capable of providing the services that Schiff Hardin provided. Staff is suggesting that somehow these other lawyers and KCP&L's internal legal team (who also charges time to project) could have done their work and the work that Schiff Hardin performed but would not have charged any additional money to perform the additional work. Staff's position is without any factual basis and patently absurd.

140. Staff's reasons for and calculation of its proposed disallowances of Schiff Hardin's fees is inconsistent to the point of being arbitrary. For the proposed disallowance for Schiff's services on the Iatan Project, Staff utilized several methodologies to decrease Schiff's rates and disallow portions of certain costs, but did not propose to disallow every dollar Schiff charged on the Iatan project. Staff has suggested that the Commission disallow dollars paid to Schiff Hardin because its bills were redacted and because travel receipts that are duplicative of what was provided in Schiff Hardin's bills were not provided. With respect to the Spearville 2 Wind Project, Staff proposes to disallow *every dollar* of legal fees charged by Schiff Hardin even though there is no evidence that Staff has any idea what services Schiff Hardin performed; in fact, Staff cannot even state what legal services were necessary on the Spearville 2 project by Schiff or any other firm or individual. Staff has not raised a serious doubt regarding Schiff Hardin's services on the Spearville 2 project and, as a result, the proposed disallowance is arbitrary and should be rejected.

4. Reduction to Common Plant Caused by Inadequate Documentation

141. Staff's proposed disallowance of $19,646,346 of Common Plant Costs due to alleged inadequate documentation is without basis. *See* Hearing Exhibit KCP&L-308, Hyneman True Up Direct Testimony at pp. 8-12. As Mr. Hyneman states in his testimony the "Jones

Book" established a means to estimate the Common cost component of KCP&L's budgeted cost. *See* Hearing Exhibit KCP&L-308, Hyneman True Up Direct Testimony at pp. 9-12. Company witness Jones explained the accounting for the Common Costs in his Rebuttal Testimony in the 0089 Case:

> The costs for the entire Iatan Project were broken into two Control Budgets, one for the Iatan Unit 1 work and one for Iatan Unit 2. The costs of the Common Work were included within these two budgets; the Common Work was not segregated out into a separate budget. Currently available cost and accounting information for the Project does not possess a mechanism to easily discern the costs of the Common Work. The cost portfolio for the Iatan construction project has hundreds of lines of data that correspond to the various contracts on the Project. The contracts address scopes of work by system (i.e. mechanical or electrical) but do not contain a breakdown of the costs by Unit 1, Unit 2, and Common Work. Accordingly, determining the value of the Common Work is more complicated than the sum of various contracts. Additionally, the majority of contracts were procured on a fixed-price basis and do not contain detailed line-item cost breakdowns of the component pieces of the work.
>
> The team built a cost estimate for each Common Asset outlined above and used reasonable means and methods to determine the estimate of each Common Asset. The team used all information available from a number of systems to build up the estimates in order to provide the best available estimate for each given asset. The team then developed a form that provides a description of the asset, its proximity to the plant, its intended use and other factors from the project design manual, cost portfolio and/or engineering drawings to value each asset. The team populated the estimate section with the built up costs for each asset yielding the final value. Most estimates include some or all of the following categories of estimated cost:
>
> 1. Engineering and design services;
> 2. Foundations required;
> 3. Pilings required;
> 4. Mechanical construction (installation) estimate;
> 5. Electrical construction (installation) estimate;
> 6. Primary mechanical equipment estimates;
> 7. Primary electrical equipment estimates;
> 8. Secondary equipment estimates (consumables);

9. Controls including systems and transmitters, etc.;
10. System finishing including painting, grouting, cleaning, etc.;
11. Maintenance equipment including in-service hoists, guardrails, coupling guards, etc.; and
12. Heating, ventilation and air conditioning equipment.

See Jones Rebuttal Testimony (0089 Case) at pp. 23-25 and Schedule SJ-4.

142. Contrary to Mr. Hyneman's assertion, KCP&L informed Staff repeatedly that these Common costs identified in Mr. Hyneman's Schedule H-2 would be above what had been identified and estimated in the "Jones Book." Staff asked on numerous occasions if KCP&L planned on updating "the Jones book". *See* Hearing Exhibit KCP&L-112, Giles True-Up Rebuttal Testimony at pp. 12-13. The first affirmative declaration to Staff that there would be additional Common Costs was in the Jones Book itself, which explained what was contained in the Jones book estimate and also explained that there were additional Common Costs that would be identified later. *See also* Schedule SJ-4 (0089 Case) at p. 5. The summary of the Jones book stated the following with respect to additional Common Costs:

> Assets considered out of scope for the common systems allocation include (1) all project costs directly attributable to the construction of Iatan 1 and Iatan 2 and (2) **any project costs that may ultimately be identifiable as Common Costs in support of the Iatan facility at the time of completion and readiness for service of Iatan 2, that either have not yet been expended or are as of the time of this analysis not readily identifiable by the individuals with professional experience completing this analysis as Common Facility costs.**

See Schedule SJ-4 (0089 Case) at p. 5 (emphasis added).

143. Staff inquired regarding updates to the Jones book repeatedly and KCP&L was consistent in its response on each occasion. *See* Hearing Exhibit KCP&L-112, Giles True-Up Rebuttal Testimony at p. 13, ln 5-9. After issuance, KCP&L froze the "Jones book" and any additional Common Plant costs were identified through individual accounting codes established to track the additional actual Common costs. This is exactly what KCP&L did. KCP&L has

made all the documentation supporting this additional amount of Common Plant available to Staff. *See* Hearing Exhibit KCP&L-112, Giles True-Up Rebuttal Testimony at p. 13, ln. 9-16. For Mr. Hyneman to now state that the documentation is inadequate is absolutely unsubstantiated.

5. Pullman Adjustment

144. The Commission should reject the Staff's proposed disallowances for Pullman costs. Staff proposes two items: (1) an adjustment for the costs of a performance bond (Change Order PL-003); and (2) the costs of change order PL-012 which represent the additional costs of utilizing a second shift (Change Order PL-012). Although Staff includes in Schedule 1-1 of its November 2010 Report two proposed disallowances related to Pullman, the Iatan Project's Chimney contractor, in the amount of ** ** for Unit 1 and ** ** for Unit 2, Staff did not provide any testimony or other evidence that explains the basis of Staff's allegation that these costs are imprudent. In its Initial Brief, Staff argues that a statement in the Kiewit Recommendation to Award Letter that "Pullman's Performance on the Project was well below expectations" does not explain why Staff is disallowing the costs to put a performance bond in place, nor is there any analysis that identifies 1) how KCP&L had Pullman's performance within its control; or 2) how KCP&L acted imprudently that led to the disallowed costs. By its silence, Staff has not created a "serious doubt" as to these expenditures and they should be deemed to be prudent by the Commission. Accordingly, the Commission should deny Staff's recommended disallowance for these costs.

6. Severance Adjustment

145. The sole basis for Staff's disallowance is the Commission's "recent" decision in 2006 that severance costs should not be recovered from rate payers. *See* Staff's Initial Brief at pp. 46-47. The Company believes that because the severance amounts consist of amounts paid

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to employees formerly involved in the Iatan Project, they are a legitimate capitalized cost and should be recovered as such.

7. Affiliate Transaction

146. Staff eliminates certain costs associated with initial project development work for environmental permitting and engineering which helped define the project scope and design of Iatan 2 facilities which were initially completed under a separate subsidiary called Great Plains Power ("GPP"). Staff recommends disallowance of these costs because it alleges that KCP&L has not demonstrated the usefulness of these rates to Missouri rate payers and that KCP&L incurred these costs in a manner that violated the Commission's affiliate transaction rule.

147. As indicated in the KCP&L True-Up Rebuttal Testimony of Darrin Ives, the use of existing GPP development work resulted in a substantial reduction in schedule and additional costs that would had to have been recreated or incurred going forward. *See* Hearing Exhibit KCP&L-113, Ives KCP&L True-Up Rebuttal at p. 15. The site where GPP began the development of its generation facility became the site that is known as the Iatan 2 generation facility. Work that had already been completed by the GPP subsidiary regarding initial environmental permitting and engineering was applicable and beneficial to the development of Iatan 2. *Id.* The Company believes that it would not have been in the best interest of rate payers to recreate the work and delay schedule simply due to the fact that the initial development of Iatan 2 generation facility began with the GPP subsidiary. *Id.* at 16. All of this information was provided to Staff in data request responses.

148. The Staff does not contest KCP&L's opinion that recreating the work at KCP&L would most likely have been more expensive than purchasing the work from GPP based on the effects of inflation on services procured alone, disregarding the significant cost increases that would have impacted the Iatan construction projects or the significant delay that would have

been experienced had KCP&L chosen to recreate the work already completed by GPP. Staff simply says it was not convinced that the costs were necessary for the construction of Iatan 2. As indicated in the Company's initial brief, this statement alone does not raise a serious doubt as to the prudence of these costs.

149. As far as the affiliate transaction rule (4 CSR 240-20.015(2)(A)), the rule requires that the compensation to GPP be the lower of the fair market price or the cost to provide the services for itself. In this case, it would have been of no value to complete a market review of what it would cost to do an environmental permitting and engineering study at the time of purchase of the GPP work as the study was being purchased at cost. *Id.* at 16. The Companies agree that they were in error for not reporting the transaction in the annual affiliate transaction report. However, this reporting failure does not preclude the fact that certain environmental and engineering needed to take place. *Id.* at 15. Since the environmental and permitting work had to be paid for by some entity, Staff's total disallowance of the costs does not reflect the cost to build Iatan 2. The Company requests the Commission reject Staff's unreasonable disallowance of the Iatan 2 initial development costs.

8. Additional AFUDC Due to Iatan 1 Turbine Start-Up Failure

150. In the Staff's November 3 report, the Staff made an adjustment regarding AFUDC costs incurred on the Iatan 1 AQCS project during the outage associated with the turbine trip. Staff's rationale, found at p. 90 of the report, was "it is Staff's belief that the increase in AFUDC accrued during the 33-day delay should be removed from plant balance of the Iatan 1 AQCS and charged to the work order capturing the costs for the turbine trip." To the Companies, it was clear that Staff's basis for its argument was that the AFUDC accrued during the turbine incident delay was not related to the Iatan 1 AQCS project and, therefore, should be removed. The Companies filed testimony of Brent Davis indicating that the turbine work (including new rotor

installation, replacement of low pressure sections to increase output, reworking of turbine spindle in or to support the performance of the new AQCS equipment) was required to support the Unit 1 AQCS retrofit project. *See*, Davis KCP&L Rebuttal Testimony at p. 61.

151. In its initial brief, Staff argues that the Companies mischaracterized Staff's argument as one of relevancy and for the first time, Staff argues that because KCP&L did not seek reimbursement from General Electric for the additional AFUDC caused by the turbine incident, rate payers should not be responsible for KCP&L's recovery of costs that it shared responsibility with a third party. There is no record of evidence to support this argument and it should be rejected by the Commission.

152. In this proceeding, Staff has not proposed any disallowance associated with the turbine trip work, but attempts to penalize the Companies for the turbine failure by not allowing the AFUDC costs incurred on the Iatan 1 AQCS project costs during the outage associated with this work. AFUDC costs are a component of the construction projects total costs and should not be disallowed when costs associated with prudent work required to return the unit to service have not been proposed to be disallowed. *See,* Ives KCP&L True-Up Rebuttal at p. 11.

9. Advanced Coal Credit AFUDC Adjustment

153. In its initial brief, Staff argues that since in 2007 to 2009, KCP&L had a free source of cash from Section 48 advanced coal investment credits, it had access to free cash flow to offset the financing costs for the construction of Iatan 2. *See* Staff's Initial Brief at p. 77. KCP&L explained in its Initial Brief, as supported by the testimony of KCP&L witness Darrin Ives, that Staff's free cash flow position is unsupported and unfounded as it attempts to impute a cost savings that does not exist and ratepayers will receive the benefits of the advanced coal investment tax credits over time. As explained by Company witness Ives, the borrowing or financing costs of KCP&L and GPE did not increase as a result of GPE not utilizing the

advanced coal investment tax credits in 2008 and 2009. *See* Hearing Exhibit KCP&L-113, Ives True-Up Rebuttal Testimony at p. 13. The free cash flow is the foundation of Staff's adjustment and the Company has proven that it did not exist. For this reason, Staff's adjustment should be rejected.

10. AFUDC Accrued on Staff's Proposed Disallowances

154. Staff has calculated the AFUDC value associated with each of the proposed construction cost disallowances detailed in the Staff's "Construction Audit and Prudence Review" report of the Iatan Construction Project which was filed on November 3, 2010, as updated on Schedule 1 to Staff witness Hyneman's true-up direct testimony. *See* Hearing Exhibit KCP&L-113, Ives True-Up Rebuttal Testimony at p. 8. The Commission will ultimately decide what level of costs to include for the Iatan 1, Iatan 2 and Iatan Common generation facilities in rate base in the companies' rates. Depending on the outcome of the Commission's decision on these issues, the AFUDC value calculation associated with these facilities should be adjusted to reflect a consistent treatment with the plant construction costs additions and associated AFUDC calculated on the additions.

11. Additional AFUDC Due to Common Plant Transfers

155. Staff has proposed the movement of construction project costs from the Iatan 1 AQCS to the Iatan Common Project. See Hearing Exhibit KCP&L-113, Ives True-Up Rebuttal Testimony at p. 12. The Commission will ultimately decide what level of costs to include for Iatan 1, Iatan 2 and Iatan Common generation facilities and rate base in KCP&L's rates. Depending on the outcome of the Commission's decision, KCP&L's ownership interest in AFUDC and property tax calculations associated with these facilities should be adjusted to reflect consistent treatment with the plant construction costs additions.

D. MRA's Proposed Disallowances Should Also Be Rejected By the Commission

156. In KCP&L/GMO's Initial Brief, KCP&L provided a detailed analysis of the flaws in Mr. Drabinski's analysis, which it summarized as follows:

> Mr. Drabinski's proposed disallowances are: (1) not tied to even the general allegations of imprudence that exist in other, irrelevant portions of his testimony; (2) not substantiated with credible evidence, (3) based on hindsight and Mr. Drabinski's substitution of his gut feel over facts; (4) riddled with errors, including double-counting of change orders and misunderstanding of the plain information that was available to him; (5) lacking in an audit trail that indicates why (to the limited extent he did) he selected certain change orders and purchase orders for disallowance; and (6) subjected to arbitrary percentage cuts, such as randomly choosing 50% of a cost, without any apparent or documented basis. Therefore, the Commission is left with a recommendation for disallowance that by its nature fails to meet the applicable prudence standard.

157. *See* KCP&L/GMO's Initial Brief at pp. 99-100. Also, in KCP&L/GMO's Initial Brief, Dr. Nielsen identifies 15 major flaws in Mr. Drabinski's analysis. *See* KCP&L Initial Brief at pp. 100-102 (quoting from Hearing Exhibit KCP&L-46, Nielsen Rebuttal Testimony at pp. 27-30).

158. MRA, in its Initial Post-Hearing Brief ("MRA Initial Brief"), does nothing to correct these fatal flaws in Mr. Drabinski's analysis. MRA merely suggests that because Mr. Drabinski "provided significant foundation related to his disallowances in his direct testimony where he analyzes the problems that ALSTOM, Kiewit, and other contractors encountered as a result of imprudent management" (MRA Initial Brief at p. 5) and that because Mr. Drabinski cited to "182 reports" (MRA Initial Brief at p. 14) that Mr. Drabinski's analysis is well founded.

159. KCP&L disputes that Mr. Drabinski has so utilized this "evidence." Mr. Drabinski had an opportunity to revise his testimony to correct these flaws. In response to Commissioner Kenney's questions regarding how he revised his rejected Kansas testimony for this case, Mr. Drabinski testified at the hearing:

> I made significant changes to my testimony, both as far as the prudence standard, and I also added a significant amount of analysis and detail based on what I learned from the time that my testimony was produced in the spring of 2010 until November 2010 when it was due here. You don't sit through weeks of hearing and go through thousands of data requests without learning a little more."

Hearing Tr. at 1707, ll. 13-20.

160. However, in neither Mr. Drabinski's "revised" testimony nor in its Initial Brief does MRA attempt to cure the most egregious problems in Mr. Drabinski's analysis: after testifying before two separate Commissions, having one (Kansas Corporation Commission) issue a rebuke for his "holistic" analysis that he failed to cure before testifying before this body, MRA and Mr. Drabinski ***still*** provide no linkage whatsoever between Mr. Drabinski's general allegations of imprudence and the disallowances he recommends to the Commission. Indeed, the same flaws that were apparent to the KCC remain in Mr. Drabinski's pre-filed testimony. MRA claims that Mr. Drabinski's analysis is based on "contemporary chronicles" of the Iatan Project, and wrongly asserts that KCP&L suggests the Commission should not rely on contemporaneous documents. *See* MRA Initial Brief at p. 15. This argument is misses the mark. What KCP&L rejects from Mr. Drabinski's analysis is his selective use of snippets of information that have been taken completely out of context, including: (1) taking any negative statement he could find from the project team, Schiff Hardin or the auditors and displaying it as though it was a festering problem that impacted costs; (2) mistaking the identification of risks by those tasked by KCP&L's management with doing so (like Schiff Hardin and the auditors) as being tantamount to KCP&L realizing the full impact of such risks; (3) failing to look at whether any of these risks materialized, were mitigated or entirely avoided; and most of all, (4) failing to show a single causal link between these snippets from carefully selected documents and the cost increases on the Iatan Project. *See* KCP&L Initial Brief at pp. 102-105.

161. MRA's allegations regarding the "General Signs of Trouble" on the Project is particularly illustrative of Mr. Drabinski's misuse of the Project's information. This argument is similar to Staff's in that MRA believes it is sufficient to simply identify general allegations of imprudence that are not tethered to any actual dollar impact to the Iatan Project. Here, MRA makes broad, admittedly "general" allegations that: (1) KCP&L continued to refine its Control Budget Estimate because it found a mistake before it was issued, and (2) budgeting of the Common Plant assets was incorrect. *See* MRA Initial Brief at p. 13. Yet, MRA makes no attempt to show that either of these issues were imprudent acts that increased the cost of the Iatan Project. At worst, these were mistakes in explicitly identified draft iterations of documents that were created during the Iatan Project's ongoing cost estimating process and which were later corrected in the Control Budget Estimate, with no consequence whatsoever to the Iatan Project and certainly no increase in costs. Mr. Meyer, an industry expert in project cost management, testified, "While the 'perfect' estimate may be an industry goal, it rarely, if ever, exists in reality. It is not uncommon within the industry to see cost increases resulting from these causes. In other words, even if KCP&L had a 'perfect' estimate back on day-one of the Project, KCP&L would still have incurred these costs but the Control Budget Estimate would have been higher." *See* Hearing Exhibit KCP&L-44, Meyer Rebuttal Testimony at p. 27, ln. 14-18. MRA offers no evidence that these "general" issues resulted in a single dollar of increase to the Iatan Project that would not have otherwise occurred had these estimates been perfect.

162. In its Brief, MRA also misleadingly indicates that Mr. Drabinski provided actual analysis to support his allegations of imprudence. MRA states, "In his analysis of purchase orders and change orders, he and his team started their review with almost 3,000 POs and COs. Ultimately they analyzed the detailed support for almost 300 separate POs and COs. This

information was provided in Schedule 36 HC to his direct testimony." MRA Initial Brief at p. 5. Schedule 36 to Mr. Drabinski's direct testimony was nothing more than a long list of purchase orders and change orders for the project. *See* Hearing Exhibit KCP&L-2601, Schedule WPD-36. Mr. Drabinski did not offer any analysis with respect to any of the change orders or purchase orders listed in Schedule 36, and no explanation as to why any particular item listed in that Schedule was imprudent or why it should be disallowed. Similarly, in MRA's chart on pages 7 – 12 of its Initial Brief, MRA repeatedly references Schedule 36 as "support" for Mr. Drabinski's allegations of imprudence and recommendations for disallowance. The chart also references other documents related to the Iatan projects, such as the Alstom contracts and settlement agreements, and Mr. Drabinski's response to Data Request No. 2 in the Kansas Corporation Commission proceeding. These documents do not provide analysis or support for his disallowances, nor does Mr. Drabinski ever make such a link in his testimony. They contain information about the projects; but Mr. Drabinski has failed to explain in his testimony why that information indicates imprudence, or how that information supports his recommended disallowance.

163. MRA's offering of "Specific Examples" is no less flawed and fails for the same reasons. Here, MRA repeats one of Mr. Drabinski's mantras, that the imprudence occurred "early" in the Iatan Project and was only corrected in 2008 when Mr. Churchman joined the Project. *See* MRA Initial Brief at p. 14. Mr. Drabinski never provides any substantive proof of what Mr. Churchman did to achieve this result, other than to claim that Mr. Churchman "fired a bunch of people" and "sat down with ALSTOM and Kiewit" and read them "the riot act." Hearing Tr. at 1696, ln. 11-23. Nonetheless, he seeks to disallow a significant portion of the ramp-up in project personnel that occurred concurrent to Mr. Churchman's arrival. More

importantly, Mr. Drabinski completely ignores the evidence that the Iatan Project was, in fact, well managed in the years before Mr. Churchman was with KCP&L. Mr. Drabinski speaks of Mr. Churchman's assembly of the contractors for a meeting as if it had never happened before, when in fact, Mr. Davis testified that KCP&L utilized active management of the contractors throughout the Iatan Project, including the years before and after Mr. Churchman left. *See* Hearing Exhibit KCP&L-18, Davis Direct Testimony at p. 20-22. In the hearing, Mr. Drabinski admitted the success KCP&L had in following the critical path for Iatan Project's design and procurement through 2006, two years before Mr. Churchman's arrival. *See* Hearing Tr. at 1648, ln. 8 to p. 1653, ln. 1. Mr. Drabinski also admitted, despite spurious claims otherwise regarding its "failures" that Burns & McDonnell completed the foundation drawings on time for critical turnovers to ALSTOM and Kiewit in August and November 2007. *See* Hearing Tr. at 1650, ln. 12-21.

164. It is MRA's attempt to support Mr. Drabinski's calculations of his recommended disallowances that is the most significantly flawed part of MRA's Initial Brief. MRA admits that Mr. Drabinski double-counted one large change order in his calculation and MRA withdrew its recommendation for a disallowance on a second change order. These mistakes total $12.2 million. *See* MRA Initial Brief at p. 6. MRA also included page references to Mr. Drabinski's Direct Testimony and Schedules that it believes relate to his recommended disallowances. However, the page references are of no help whatsoever because none of the passages cited in "support" from Mr. Drabinski's pre-filed testimony show the linkage between the allegations he makes of imprudence and the disallowances he recommends. The most flagrant example of this is his disallowance for Kiewit. KCP&L has established that Mr. Drabinski's $112 million has no foundation or basis. It is not tied to a specific change order, invoice or agreement, and it appears

to be a number that he simply pulled out of thin air. There is no evidence that any of the general allegations of imprudence caused the Kiewit contract to increase by $112 million. Moreover, none of the pages cited from Mr. Drabinski's pre-filed Direct Testimony on page 7 of MRA's Initial Brief explain how Mr. Drabinski arrived at this number, save the following reference on p. 159 that states:

** **

165. *See* Hearing Exhibit: KCP&L-2601, Drabinski Direct Testimony, p. 159, ln. 10-15 This is the only explanation Mr. Drabinski provides for the largest single disallowance he recommends, and as KCP&L/GMO's Initial Brief shows, Mr. Drabinski got all of his facts wrong. *See* KCP&L/GMO's Initial Brief at p. 110, 118-122.

166. In its Initial Brief, KCP&L identified in detail the flaws with each of the Mr. Drabinski's calculations and support of those calculations. *See* KCP&L/GMO Initial Brief at pp. 111-130. Other than the two small corrections identified in the foregoing, MRA has not addressed any of the flaws in Mr. Drabinski's calculation of his disallowances. As an example, Mr. Drabinski still includes:

- Change orders for legitimate scope additions to the ALSTOM contract, double-counted items from Unit 1 and every amount paid to ALSTOM over its base contract due to a flawed understanding of what a fixed-price contract represents (*see* KCP&L/GMO Initial Brief at pp. 111-117);
- An incorrect amount for the Kiewit Contract Amendment (an actual amount of $79 million, not $112 million) and MRA still fails to articulate any basis for these recommended disallowances, which includes base scope of work shifts from other contractors to Kiewit and addition of quantities of work through the maturation of the Iatan Project's design (*See id.* at 117-122);

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- No explanation whatsoever regarding the Kissick change orders Mr. Drabinski seeks to disallow (*See id.* at 122-123);
- A disallowance of the full amount by which Burns & McDonnell's time and materials contract was exceeded, again with no linkage between any imprudent action and those costs (*See id*. at 123-124);
- An arbitrary 50% cut of the fees of Aerotek and Nextsource, the agencies that supplied the workers for the Project Team that Mr. Churchman and others hired to help manage the Iatan Project (*See id*. at 125-126);
- Another arbitrary 50% cut for professional support for which no basis exists in Mr. Drabinski's testimony (*See id.* at 126-128), and;
- A completely un-explained chart of "other PO's, Indirects, Uncommitted" that contains significantly more double-counted change orders than the one for the WSI welding that MRA voluntarily removed, and for which there is no audit trail or understanding regarding how or why these specific items were selected. (*See id.* at 128-130).

167. In addition, there is a repeat of the red herrings that have so plagued Mr. Drabinski's analysis. MRA chose to withdraw three of Mr. Drabinski's analyses at the outset of the hearing, though failed to provide the Commission with an errata sheet of which parts of his pre-filed testimony could be completely ignored. *See* Hearing Tr. at 1596-7 Unfortunately, MRA has decided to go back to sections of Mr. Drabinski's pre-filed testimony that it had or should have abandoned. As an example, MRA's assertion on p. 15 of its Initial Brief that "project management problems caused the balance of plant costs to jump from $357 million to almost $1 billion" could only be formulated by making a comparison of the Iatan Unit 2 Project's original 2004 Project Definition Report to the current Iatan Unit 2 costs, which is one of the analyses Mr. Drabinski had previously abandoned. Another example is Mr. Drabinski's inclusion of a lot of scope items in the "$1 Billion" that were not in the "$357 million" he uses as his starting point. *See* Hearing Exhibit: KCP&L-2601, Drabinski Direct Testimony, p. 173-5. In addition, MRA makes an assertion that, "$1.485 billion cost estimate in the December 2006 CBE was consistent with the experience of other power projects." MRA Initial Brief at p. 16. This is

another red herring resurrected from Mr. Drabinski's deeply flawed and ultimately abandoned analysis of comparative plant costs. MRA also criticizes KCP&L for the strength of its contracts despite the fact that Mr. Drabinski never cites a single sentence in any contract that was employed on the Iatan Project in support of this position. Yet, he concludes that KCP&L employed "poorly written contracts" because "every time a problem arose, rather than being able to use the contract to resolve it, they went to a settlement." *See* Hearing Tr. at 1645, ln. 11-14.

168. MRA's Initial Brief even features a new red herring that it borrowed from Staff, that the removal from the Iatan Project's budget of rail cars KCP&L had initially planned to purchase should have been a reduction in scope. Once again, MRA confuses a budget for an expense. Mr. Meyer responded to this same allegation contained in Staff's November 2010 Report as follows:

> Staff's attempt to use one scope item against KCP&L where KCP&L nevertheless made a good decision that will result in a savings to KCP&L's customers in this rate case shows Staff's fundamental misunderstanding of how large projects are managed, budgeted, scheduled, tracked, controlled and maintained. Many of KCP&L's actions were similar to value engineering work that is commonly done during construction projects, wherein the project team finds better and less expensive ways to accomplish the same end result. Within the industry in general, evidence of such changes and their effects on end-cost would hardly be the target of criticism. Rather, they would be seen as evidence of reasonable management, engineering and construction.

See Hearing Exhibit KCP&L-44, Meyer Rebuttal Testimony at p. 59. In other words, had KCP&L continued with its original plan of purchasing the rail cars, the project would have cost more and KCP&L could have been accused of an imprudent action. Instead, KCP&L acted prudently and reduced the costs of the Iatan Project.

169. Finally, MRA's attempt to juxtapose the level of support for Mr. Drabinski with that for Mr. Meyer's and Dr. Nielsen's is, in and of itself, wholly without support. MRA merely

states that Mr. Meyer has "no support" for his conclusions and Dr. Nielsen does not support "why the balance of expenditures from KCP&L are prudent." MRA Initial Brief at p. 5. However, MRA provides no basis for these conclusions—it cites no testimony, provides no factual support, or even simple analysis of what it means. Both Mr. Meyer and Dr. Nielsen provided voluminous support for their respective opinions. The basis for Mr. Meyer's opinions and the analysis he performed of the Iatan Project's Cost Control System are detailed in earlier sections of this Brief. In addition, such a conclusion completely ignores the significant and competent testimony of KCP&L's other prudence witnesses who each contributed to KCP&L's explanation of its prudent management of the Iatan Project.

170. MRA's revised recommended disallowance of $13,938,795 for Iatan 1 (or $5,220,079 KCP&L Missouri Jurisdictional share and $2,508,983 GMO share) and a $218,755,000 disallowance of the total cost of Iatan 2 and Common Plant (or $64,029,260 KCP&L Missouri Jurisdictional share and $39,375,900 GMO share) for Iatan Unit 2 should be rejected by the Commission because MRA's recommendations are not supported by a credible analysis that is allowed under Missouri law.

III. NON-PRUDENCE ISSUES

A. Return on Equity/Capital Structure

1. Return on Common Equity

171. Staff, the Department of Energy, and the Industrials all advocate a return on equity ("ROE") that is well below the national average of 10.33% for vertically-integrated, investor-owned utilities like KCP&L and GMO. They each rely upon data from the recent

economic recession, depressed inflation rates, and government-induced low interest rates. They ignore recent clear indicators of economic recovery and growth in the labor market.[4]

172. These parties also attack the analysis and recommendations of Dr. Samuel Hadaway, a respected economist who has testified nationwide for the past thirty years. In the Commission's decisions in KCP&L's 2006 and 2007 rate cases, his credentials were held to be impressive and his conclusions sound. Although not every recommendation Dr. Hadaway has made before this Commission or other public utility commissions has been accepted, more often than not his recommendations have been closer to the decisions on ROE rendered by those commissions than those of his adversaries.

(a) Growth Rates

173. Dr. Hadaway's estimated long-term growth rate of 6.0% continues to be the subject of debate, even though it is based entirely upon historical growth rates issued by the St. Louis Federal Reserve Board. *See* Hearing Exhibit KCP&L-27, Hadaway Direct Testimony at pp. 41-42 and Schedule SCH2010-4. It is not a self-created number or a product of his imagination any more than Mr. Gorman's tendency to use the lower of median versus average or his inflating a CAPM estimate that he thinks is too low. *See* Hearing Exhibit GMO-1403, Gorman Direct Testimony at p. 39.

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[4] As discussed at the hearing with Dr. Hadaway, the Congressional Budget Office's January 2011 projection of growth in nominal GDP was 5.1% for the near term. *See* Hearing Tr. pp. 2486-88. On March 15, 2011, the Federal Reserve Board's Open Market Committee (FOMC) stated that information received since its January meeting "suggests that the economic recovery is on a firmer footing, and overall conditions in the labor market appear to be improving gradually." It also noted: "Commodity prices have risen significantly since the summer, and concerns about global supplies of crude oil have contributed to a sharp run-up in oil prices in recent weeks." *See* Federal Reserve Press Release, www.federalreserve.gov/ newsevents/press/monetary/20110315 a.htm (Mar. 15, 2011).

"To promote a stronger pace of economic recovery and to help ensure that inflation, over time, is at levels consistent with its mandate, the Committee decided today to continue expanding its holdings of securities as announced in November." The FOMC stated that it intends to purchase $600 billion of longer-term Treasury securities by the end of the second quarter of 2011 in this regard. *Id*. The Companies request that the Commission take official notice of these facts pursuant to Section 536.070(6).

174. In these proceedings Mr. Gorman took a CAPM range of 8.12% to 9.17%, relied on the high-end of that range, and then rounded it up to 9.20%. *See* Hearing Exhibit GMO-1403, Gorman Direct Testimony at p. 39. When assessing growth rates, Mr. Gorman utilized a *median* growth rate of 5.41% for his Constant Growth DCF analysis, instead of *average* growth rates (5.68% for KPC&L or 5.63% for GMO) which would have boosted his ROE estimate. *See* Hearing Exhibit KCP&L-1203, Gorman Direct Testimony at p. 20; Hearing Exhibit GMO-1403, Gorman Direct Testimony at p. 21. Similarly, for his long-term Growth DCF analysis, Mr. Gorman chose *median* growth rates for KCP&L and GMO of 4.59% and 4.61%, compared with *average* rates of 4.92% and 4.89%, respectively, that would have increased his ROE calculation. *See* Hearing Exhibit KCP&L-1203, Gorman Direct Testimony at p. 24; Hearing Exhibit GMO-1403, Gorman Direct Testimony at p. 25. Mr. Gorman also arbitrarily eliminated Empire District Electric Company growth rates from his Constant Growth DCF models which would have increased the median ROE two basis points. *See* Hearing Exhibit KCP&L-28, Hadaway Rebuttal Testimony at pp. 17-18.

175. Staff witness Murray abandoned all pretense of choosing data that could be confirmed by either government or industry statistics, and chose instead to reject a 5.97% growth rate based on Value Line and Reuters data, finding it "non-sustainable." *See* Hearing Tr. at 2992. He then magically arrived at a 4.0%-5.0% growth rate "based upon Staff's expertise and understanding of current market conditions." *See* Hearing Exhibit KCP&L-210; Hearing Tr. at 2992-98. Admitting that he cited no authority to reduce the 5.97% growth rate by 100 to 200 basis points (Hearing Tr. at 2998), Mr. Murray was vague on whom he consulted and how this secret process of reducing a growth rate based on public information occurred.

176. While certain commissions have not accepted Dr. Hadaway's recommendations, others have, including this Commission. In a recent decision by the Utah Public Service Commission, it continued "to place primary reliance upon DCF model results to estimate the cost of common equity" and make its "own consideration of the multiple model iterations," concluding that an ROE of 10.6% should be set. *In re Rocky Mountain Power,* 2010 Utah PUC LEXIS 50 at pp. 7-8, 279 P.U.R. 4th 1 (2010). Dr. Hadaway's recommendation of 11.0% in that case utilized GDP growth rates that were part of his DCF model presented in this case. *Id.* at 6.

177. Even in the jurisdictions where Dr. Hadaway's analysis was not entirely adopted, the "results of analytical models" presented by Dr. Hadaway were viewed as "useful." *See In re Fitchburg Gas & Elec. Light Co.*, 2008 Mass. PUC LEXIS 13 (Feb. 29, 2008) at 62 ("Fitchburg Gas Order"). There the Massachusetts Department of Telecommunications and Energy adopted a return on equity of 10.25%, 50 basis points lower than Dr. Hadaway's recommendation of 10.75%, but almost 100 basis points above that of the Massachusetts Attorney General, who advocated a range of 9.1% to 9.27%. *Id.* at 54, 58. Moreover, in arriving at an ROE of 10.25%, the Massachusetts Commission adjusted the ROE downward as a result of certain reduced risks to the company and other factors. *Id.* at 62.

178. It should also be recognized that Mr. Gorman's opinions have not received universal acceptance. *See Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 555 N.E.2d 693, 706 (Ill. 1989) (Commission order that "disallowances proposed by Mr. Gorman are not appropriate" affirmed).

(b) Constant Growth DCF Analysis

179. The Industrials criticize the use of a Constant Growth DCF analysis, mainly as a result of this Commission's findings in its Report & Order in AmerenUE's last rate case, No.

ER-2010-0036 (May 28, 2010) ("AmerenUE Order") However, the expert in that case only relied upon that one DCF model. *Id.* at 21.

180. In this case Mr. Gorman's Constant Growth DCF model using analysts' growth rates yields 10.39% (KCP&L) and 10.33% (GMO) ROE estimates, whereas Dr. Hadaway's model runs from 10.2% to 10.4%, essentially agreeing with Mr. Gorman. It is therefore ironic that the Industrials criticize Dr. Hadaway's Constant Growth DCF model, when their own expert essentially agrees with the Hadaway analysis. *See* Industrials Initial Brief at p. 17; Hearing Exhibit KCP&L-1203, Gorman Direct Testimony at p. 27; Hearing Exhibit GMO-1403, Gorman Direct Testimony at p. 29; Hearing Exhibit KCP&L-27, Hadaway Direct Testimony at p. 22 and Schedule SCH2010-11 at p. 2.

(c) Estimates of Investment Advisors

181. Staff argues that the Commission should rely on the private opinions offered by investment bankers not in the context of utility regulatory proceedings, but rather in private discussions with clients contemplating acquisitions and other commercial transactions. *See* Staff's Initial Brief at pp. 133-34. However, because they are not designed to be used for ratemaking and, as such, utilize a more limited, less comprehensive methodology than that used in regulatory proceedings, such opinions should not be a part of the ratemaking process.

182. This is why Dr. Hadaway relied on public information from the St. Louis Federal Reserve Board and financial information services like Value Line, Thomson Reuters, and Zacks that regularly publish their data for all to see. *See* Hearing Exhibit KCP&L-27, Hadaway Direct Testimony at 39-41 and Schedule SCH2010-4 and SCH2010-5.

183. While various state commissions may differ on their approaches to determining an appropriate return on equity, they consistently reject using the opinions of investment bankers. *See Commonwealth Edison Co.*, 2006 Ill. PUC LEXIS 43, 250 P.U.R. 4th 161 (July 26,

2006) at 112 (“the problems inherent with the use of investment bank analyses outweigh their contribution”); AmerenUE Order 20.

(d) Decisions by Other Commissions

184. The Companies’ adversaries can’t seem to make up their minds about what to do with the decisions of other state utility commissions.

185. On the one hand, the Industrials have scoured the reports of utility commissions to find any criticism of Dr. Hadaway and ignore the decisions that have accepted his recommendations. Then, on the other hand, they advise this Commission to ignore the decisions of other utility commissions or the national ROE averages of those decisions, apparently because they find those return on equity decisions too high. Yet, when they locate a commission order that does set an ROE that is below the national average, they seize upon it as a model worthy of emulation.

186. As this Commission has stated, average allowed ROEs are consulted not to “slavishly follow the national average in awarding a return on equity,” but rather to recognize that Missouri utilities “must compete with other utilities all over the country for the same capital.” *See* AmerenUE Order at 17. Other commissions have followed this practice, consulting not only their previous ROEs for other electric utilities, but the decisions of other commissions that regulate such utilities. *See In re PacificCorp*, 2006 Wash. UTC LEXIS 156 (April 17, 2006) at 68; *In re Northern Indiana Public Service Co.*, 2010 Ind. PUC LEXIS 294 (Aug. 25, 2010) at 26 (“NIPSCO Order”).

187. If the Commission is concerned about attracting capital to Missouri’s utilities, it will pay attention to ROEs issued by other states in the Midwest, and arrive at a fair decision that sets the return on equity for utilities like KCP&L and GMO who have been reliable and stable performers in the midst of severe economic times and a major construction program. An ROE

decision that falls below the national average of 10.33% would send the wrong message to both the Companies and the financial markets.

188. In this regard, the Commission should take into consideration the high ratings contained in the customer surveys produced by J.D. Power & Associates, as well as the PA Consulting awards for reliable service. *See* Hearing Exhibit KCP&L-7, Blanc Direct Testimony at p. 10; Hearing Exhibit KCP&L-3, J. Alberts Surrebuttal Testimony at p. 9. Contrary to Staff's argument, KCP&L's Vice President of Customer Service Jimmy Alberts, explained that customers would not pay more for the service provided by KCP&L and GMO if an ROE at the upper range of Dr. Hadaway's estimate were granted. An ROE toward the higher end would allow a utility, for example, to remove a fee normally charged when a customer pays an overdue utility bill with a credit card, and shift such fees from "the customer's pocketbook into the utility portion of the rates. But it doesn't mean that customers are expected to pay more. It just means they're expected to pay for the level of service that we've delivered." *See* Hearing Tr. at 2944-45.

189. Such an adjustment based on good or poor performance is consistent with what Commission's routinely decide in setting ROE's. Recently, the Indiana Commission granted an ROE at the lower end of its zone of reasonableness of 9.9% to 10.5% in its NIPSCO Order, based on low J.D. Power ratings and "concerns regarding NIPSCO's managerial and operational decisions." *See* NIPSCO Order, 2010 Ind. PUC LEXIS 294 at pp. 26-27. *Accord*, Fitchburg Gas Order, 2008 Mass. PUC LEXIS 13 at 62.

190. Consequently, consideration should be given to granting the Companies an ROE at the high end of the zone of reasonableness in this case, which extends from 9.82% to 10.82%.

2. The Cost of Debt of Both KCP&L and GMO Should Reflect their Actual Costs to the Greatest Extent Possible

191. The Companies have proposed that their cost of debt reflects either their actual cost or such cost to the greatest extent possible. Regarding KCP&L, Staff has generally agreed with that concept, although it offered last-minute "considerations" for the Commission in Mr. Murray's True-up Rebuttal Testimony. For GMO, Staff has recommended a proxy based on the debt costs of Empire District Electric Company which should be rejected.

(a) KCP&L

192. Staff and KPC&L generally agree on capital structure, and their cost of debt recommendations are close, with Staff proposing a cost of 6.825% and KCP&L, 6.82%. *See* Hearing Exhibit KCP&L-311, Murray True-up Direct Testimony at p. 3; Hearing Exhibit KCP&L-109, Cline True-up Direct Testimony at p. 1.

193. However, Mr. Murray has suggested that a consolidated cost of debt be used for both KCP&L and GMO, "at least for future rate cases." *See* Hearing Exhibit KCP&L-311, Murray True-up Direct Testimony at p. 4. Then, in his true-up rebuttal, he expanded on this theory, suggesting two alternative figures, based upon a hypothetical assignment of $250 million of 2.75% Senior Notes that Great Plains Energy issued solely for the benefit of GMO in August 2010. *See* Hearing Exhibit KCP&L-312, Murray True-up Rebuttal Testimony at pp. 3-4, 6-8; Hearing Exhibit KCP&L-110, Cline True-up Rebuttal Testimony at pp. 1-5.

194. At the true-up evidentiary hearing, Mr. Murray adhered to his cost of debt recommendation of 6.825%, clarifying that the figures noted in his true-up rebuttal testimony were merely "contingent" based upon the $250 million Senior Notes being allocated to KCP&L. *See* Hearing Tr. at 4899-4903. Since the record is clear from Mr. Cline's testimony that this debt was issued only for the benefit of GMO, there is no reason to engage in hypothetical debt assignment for KCP&L and no reason, at this late time, to consider a consolidated cost of debt

proposal which has not been properly presented to the Commission. *See* Hearing Exhibit KCP&L-110, Cline True-up Rebuttal Testimony at pp. 1-4.

(b) GMO

195. GMO has proposed a capital structure that reflects its actual cost of debt with the exception of only one debt issuance. The Company's cost of debt was originally projected to be 6.73%, but based upon year-end 2010 actual results, GMO has lowered this figure to 6.42%. *See* Hearing Exhibit GMO-15, Hadaway Direct Testimony at p. 6; Hearing Exhibit GMO-54, Cline True-up Direct Testimony at pp. 1-2.

196. However, Staff recommends a fictitious cost of debt that uses as a proxy the debt costs of the Empire District Electric Company which bear no relationship to GMO or, indeed, any other public utility except Empire. The figure that Staff recommends, as updated in its True-up case, is 6.36%. *See* Hearing Exhibit GMO-269, Murray True-up Direct Testimony at p. 3.[5] Staff's only reason to depart from reality appears to be that one issue of GMO debt (the $500 million Senior Notes with a coupon rate of 11.875%) continues to use a hypothetical cost of 6.26% which was first assigned by Aquila as part of its commitment to the Commission to hold its ratepayers harmless from the effects of its unsuccessful non-regulated operations. The cost assignment process regarding this $500 million debt—which Great Plains Energy agreed to continue per Aquila's past commitments and which this Commission blessed in the Aquila

[5] Mr. Murray introduced a new issue at the eleventh hour in his True-Up Rebuttal Testimony regarding an additional hypothetical cost of debt methodology related to Great Plains Energy's issuance of $250 million of Senior Notes in August 2010 for the benefit of GMO. *See* Hearing Exhibit GMO-270, Murray True-up Rebuttal Testimony at pp. 2-7. However, since Mr. Murray testified that Staff's recommendation continues to be based on using Empire's cost of debt as a proxy for GMO (Hearing Exhibit GMO-270, Murray True-up Rebuttal Testimony at p. 7; Hearing Tr. pp. 4900-03), the Company directs its arguments to that position. The "considerations" offered by Mr. Murray are not proper for all the reasons noted in the body of this brief because they, too, depart from the reality of GMO's actual cost of debt. They are also improper true-up rebuttal, as noted in the motion to strike filed by both KPC&L and GMO on March 3, 2011.

merger case -- is the only fact that Staff cites to support its position that GMO's cost of debt process is "not based on market-driven, arm's-length transactions." *See* Hearing Exhibit GMO-235, Murray Rebuttal Testimony at p. 26.

197. Company witness Michael W. Cline, Treasurer and Vice President of Investor Relations for Great Plains Energy Inc., has provided compelling testimony why there is no reason to depart from GMO's actual costs.

198. First, Staff's recommendation ignores all of the factors that dictate a utility's cost of debt. These concrete, reality-based factors that influence a company's cost of debt include: (1) average maturity; (2) the timing and amount of the debt issuance; (3) the terms and conditions of the issuance; (4) the credit profile of the company at the time the debt is issued; (5) the availability of alternate sources of funding; (6) the company's market capitalization; and (7) the financial market conditions existing at the time the debt is issued. *See* Hearing Exhibit GMO-9, Cline Rebuttal Testimony at p. 7. Mr. Murray conceded on cross-examination that he considered none of those facts in arriving at his recommendation to use Empire's debt as a proxy for GMO. *See* Hearing Tr. at 4017.

199. Staff focuses solely on the 11.875% Senior Notes that were issued by GMO's predecessor on July 3, 2002. Because the cost of this offering was driven by Aquila's credit difficulties from its unregulated operations, Aquila subsequently committed not to pass along the full cost of that debt to its customers. *See* Hearing Exhibit GMO-9, Cline Rebuttal Testimony at p. 7. Great Plains Energy agreed to honor that commitment when it proposed to acquire Aquila's Missouri electric operations, and this Commission, upon approving that acquisition, concurred. *See* Report & Order, *In re Great Plains Energy Inc.*, Case No. EM-2007-0374 at 145-46, 156 & n. 609, 248-50 (July 1, 2008) ("Merger Order"). The Commission noted with approval that the

merger applicants proposed to continue "the established process for apportionments of the remaining debt ***in future rate cases***" of Aquila, including a "blended allocated rate" that reflected "the investment grade equivalent rate" of the debt when Aquila was not investment grade. *Id*. at ¶¶ 392, 399 & n. 325 at 136-38 (emphasis added). One of the two issues receiving this treatment was the $500 million Senior Notes, which originally bore an interest rate of 14.875%, and which was reduced to 11.875% when the merger closed. *Id.*; Notice of Closing at 2 (July 18, 2008).

200. Moreover, the methodology used by GMO to determine the cost of the 11.875% Senior Notes in this rate case -- one of the "future rate cases" that was contemplated by Aquila and the Commission[6] -- is clearly more rational and scientific than picking a proxy out of the air. Mr. Cline explained that the methodology used in this and in prior GMO/Aquila rate cases was to assign a cost to portions of the debt that is comparable to similar debt issued by utilities with investment-grade credit ratings. To maintain continuity, GMO used the cost assigned by Aquila to $336.5 million of the $500 million Senior Notes that was used in the prior rate cases (5.98%). GMO then assigned a cost of 6.83% to the remaining $163.5 million of the $500 million issue that was based on the Bloomberg average BBB-minus utility bond index for 2009, which is the test year in this case. *See* Hearing Exhibit GMO-9, Cline Rebuttal Testimony at p. 8. While this method requires a degree of subjectivity, it is based upon Aquila's historical assignment process that the Commission noted with approval when it authorized Great Plains Energy's acquisition of Aquila. *See* Merger Order at pp. 137-38, n. 525. Indeed, the Commission found that the merger applicants had withdrawn their request to recover Aquila's actual debt interest "based on past

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[6] *Id.* at ¶ 399 at p. 138.

commitments made by Aquila with respect to certain specific debt issues." *Id*. at 156 and n. 609 (specifically citing the $500 million Senior Notes).

201. Staff's alternative is to embrace the cost of another company's cost of debt and ignore completely all elements of GMO's actual cost of debt. Mr. Murray acknowledged the vast differences between Empire and GMO, with Empire serving no major metropolitan areas unlike GMO, having only 170,000 customers (compared to GMO's over 300,000 customers), and a generation capacity significantly lower than GMO's 2,000 MWs. He also agreed that Empire does business in four states, is subject to four separate regulatory commissions, and operates a natural gas distribution utility, whereas GMO operates only in Missouri as an electric utility. *See* Hearing Tr. at 4015-17.

202. As emphasized by Mr. Cline, the only debt issue of GMO that is not treated at its actual cost is the 11.875% Senior Notes. In all other respects, GMO proposes to use its actual cost of debt. *See* Hearing Exhibit GMO-9, Cline Rebuttal Testimony at p. 6; Hearing Exhibit GMO-55, Cline True-up Rebuttal Testimony at p. 3. These Senior Notes mature in mid-2012, so thereafter GMO's cost of debt will be based entirely upon its actual cost, and not a blended or hypothetical rate. Because GMO is within a year of being able to reflect its actual cost of debt in rates, this is not the time to move from a nearly-actual cost of debt scenario (with only the 11.875% Senior Notes receiving an assigned cost) to an entirely fictional cost of debt proxy methodology.

203. Continuing with the current cost of debt methodology and moving toward a completely actual cost of debt methodology is consistent with this Commission's preference for setting rates based upon actual capital structure and actual cost of debt. *See In re Missouri Gas Energy*, Case No. GR-2009-0355 (Feb. 10, 2010) at pp. 17-20; *In re Kansas City Power & Light*

Co., Case No. ER-2007-0291 (Dec. 6, 2007) at pp. 31-32; *In re Union Elec. Co.*, Case No. ER-2007-0002 (May 22, 2007) at pp. 33-34); *In re Kansas City Power & Light Co.*, Case No. ER-2006-0314 (Dec. 21, 2006) at p. 20.

204. Just as there is no good reason to disregard GMO's actual capital structure, there is no good reason to ignore all of its actual debt costs and accept a proxy. The Commission should exercise its discretion by accepting GMO's recommendations where all but one debt issue is based upon the Company's actual costs. *See generally State ex rel. Missouri Office of the Public Counsel v. PSC*, 293 S.W.3d 63, 84 (Mo. App. S.D. 2009).

B. Off-System Sales Margins Should Continue to be Set at the 25th Percentile

205. Staff and the Industrials cannot figure out why KCP&L's off-system sales (OSS) margins have generally declined since 2007. Pursuing an elaborate series of hypotheses resembling the board game "Clue," they ask: Is it because of the jurisdictional mismatch between Kansas and Missouri? Is it an intentional failure to participate in the OSS wholesale electricity market? Is it somehow related to the increase in rates caused by KCP&L's construction program? Is it this Commission's fault for setting rates at the 25th percentile in the 2006 and 2007 rate cases? The answer does not require endless accusations involving Colonel Mustard and whether the crime was committed in the library with the candlestick.

206. The answer is simple: OSS margins are determined by two factors: (a) the volume of electricity available for sale and (b) the wholesale market price that the electricity receives.

207. Company witness Michael Schnitzer of the NorthBridge Group did his best to explain this. In response to Mr. Mills' question about what influence KCP&L has on the level of OSS margins, Mr. Schnitzer stated it would only have influence to a "limited extent. It can't affect the market price that it receives, nor can it affect the level of retail load that it has to serve." *See* Hearing Tr. at 3307.

208. Responding to a question from Commissioner Davis regarding expected levels of sales, Mr. Schnitzer again noted the primary variables: "Different combinations of prices and fuel costs and loads." *Id.* at 4846. During the in camera session he described several scenarios that were part of his model, all consisting of cost information and volumes. *See* Hearing Tr. at 5854-56.

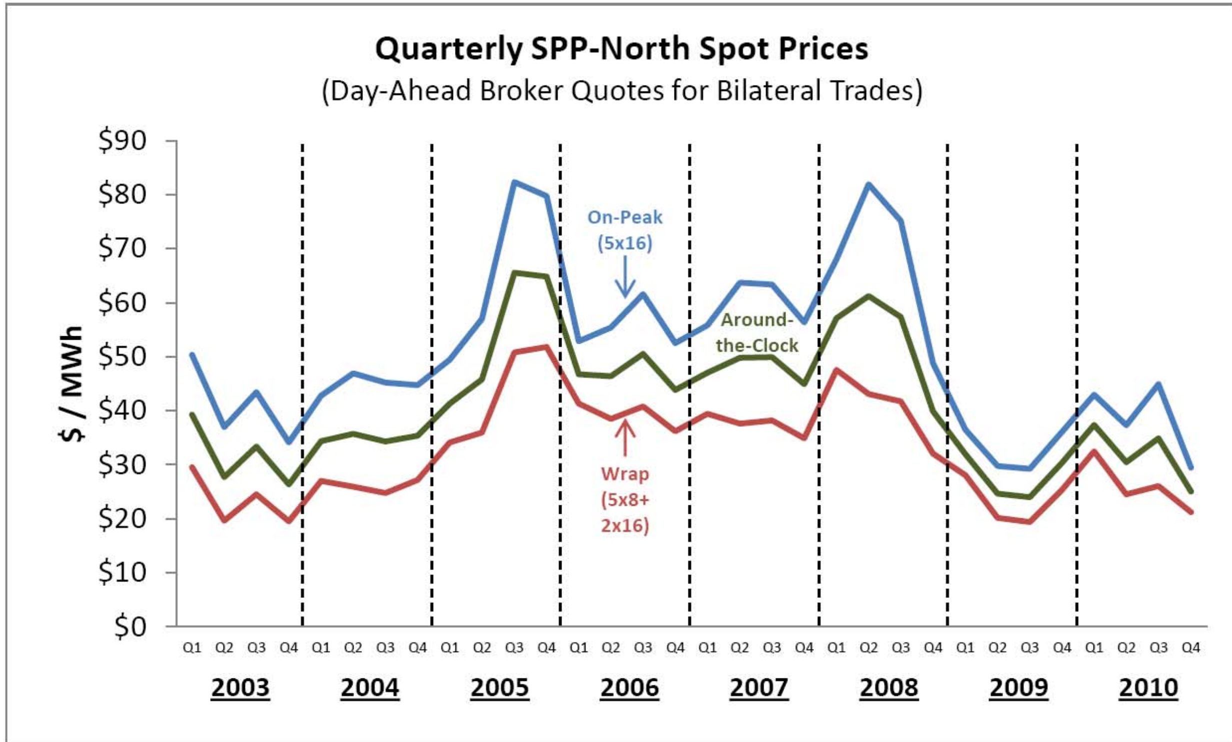
209. Addressing the questions regarding the decline in OSS margin, Mr. Schnitzer's table and graph, set forth in KCP&L Exhibit 122 and reproduced below, show the pattern of wholesale electricity prices in the SPP-North region from 2003 through 2010. *See* Hearing Exhibit KCP&L-122. They clearly confirm what KCP&L has been saying for several months regarding the decline in energy prices.

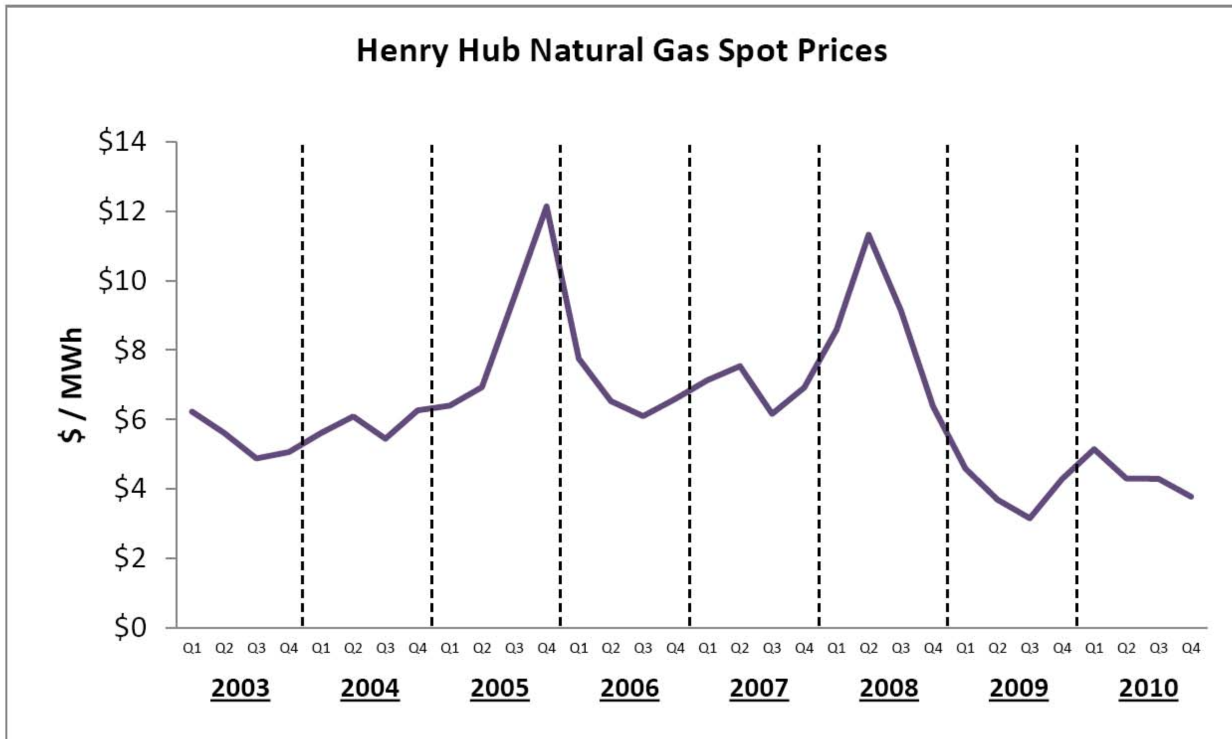
MMS Response to on-the-Record
Data Request at p. 3330,
lines 5-14. February 3, 2011

PP-North Quarterly Spot Prices (2003-2010)

ource: Megawatt Daily Day-Ahead Broker Quotes

Quarter	Year+Quarter	5x16 On-Peak ($ / MWh)	7x8, 2x16 Wrap ($ / MWh)	7x24 Around-the-Clock ($ / MWh)	Henry Hub Natural Gas ($ / MMBtu)
Q1	2003_Q1	$50.33	$29.54	$39.25	$6.23
Q2	2003_Q2	$36.97	$19.60	$27.71	$5.61
Q3	2003_Q3	$43.42	$24.51	$33.34	$4.87
Q4	2003_Q4	$34.11	$19.50	$26.32	$5.06
Q1	2004_Q1	$42.77	$26.96	$34.34	$5.61
Q2	2004_Q2	$46.91	$25.95	$35.74	$6.09
Q3	2004_Q3	$45.23	$24.73	$34.30	$5.45
Q4	2004_Q4	$44.71	$27.17	$35.36	$6.26
Q1	2005_Q1	$49.47	$34.14	$41.30	$6.40
Q2	2005_Q2	$57.01	$35.97	$45.80	$6.93
Q3	2005_Q3	$82.33	$50.79	$65.52	$9.54
Q4	2005_Q4	$79.74	$51.80	$64.85	$12.14
Q1	2006_Q1	$52.87	$41.33	$46.72	$7.76
Q2	2006_Q2	$55.38	$38.51	$46.39	$6.53
Q3	2006_Q3	$61.62	$40.79	$50.52	$6.09
Q4	2006_Q4	$52.53	$36.21	$43.83	$6.60
Q1	2007_Q1	$55.79	$39.40	$47.06	$7.13
Q2	2007_Q2	$63.73	$37.58	$49.79	$7.54
Q3	2007_Q3	$63.33	$38.21	$49.94	$6.16
Q4	2007_Q4	$56.35	$34.87	$44.90	$6.92
Q1	2008_Q1	$68.03	$47.54	$57.11	$8.58
Q2	2008_Q2	$81.94	$43.09	$61.23	$11.32
Q3	2008_Q3	$75.14	$41.73	$57.34	$9.15
Q4	2008_Q4	$48.81	$32.07	$39.89	$6.38
Q1	2009_Q1	$36.47	$28.03	$31.97	$4.58
Q2	2009_Q2	$29.73	$20.14	$24.62	$3.68
Q3	2009_Q3	$29.22	$19.41	$23.99	$3.15
Q4	2009_Q4	$36.05	$25.33	$30.34	$4.29
Q1	2010_Q1	$42.96	$32.49	$37.38	$5.15
Q2	2010_Q2	$37.28	$24.54	$30.49	$4.30
Q3	2010_Q3	$44.92	$26.06	$34.87	$4.29
Q4	2010_Q4	$29.48	$21.19	$25.06	$3.78


Quarterly SPP-North Spot Prices
(Day-Ahead Broker Quotes for Bilateral Trades)
$ / MWh
$90
$80
$70
$60
$50
$40
$30
$20
$10
$0
On-Peak
(5x16)
Around-
the-Clock
Wrap
(5x8+
2x16)
Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4
2003
2004
2005
2006
2007
2008
2009
2010


Henry Hub Natural Gas Spot Prices
$ / MWh
$14
$12
$10
$8
$6
$4
$2
$0
Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4
2003
2004
2005
2006
2007
2008
2009
2010

210. Although the Industrials and Staff want to ignore the obvious, the plain fact is that the decline in OSS margins about which they complain has generally tracked the decline in electricity prices.[7] Mr. Schnitzer testified that during "the last several years prices have often been declining," and that even with that decline, "I haven't seen any direct evidence that the company hasn't been selling when it would be economic to do so." *See* Hearing Tr. at 4856.

1. The Kansas-Missouri Problem

211. The Industrials have made much of the different OSS allocation methodologies, but careful analysis shows this is a red herring. KCP&L has conceded that the different jurisdictional allocation methodologies for OSS used by Kansas and Missouri do create an imbalance where the company loses roughly 5 cents for every dollar that it makes in sales. *See* Hearing Tr. at 3369.

212. While that problem needs to be solved, it is a collateral issue. Mr. Blanc, responding to questions from the bench testified that it is "not the driving force" behind the arguments on where to set OSS margins in Missouri. *See* Hearing Tr. at 3407. Because the loss is only 5%, it has no influence over KCP&L's efforts to sell excess power and doesn't relate to where OSS margins should be set in rates.

213. Several examples illustrate this point. Because of the over-allocation of OSS margin to Kansas, KCP&L will realize a negative impact even if its OSS margin or profit is exactly the amount placed into rates by the Commission. As the record indicates, KCP&L has

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[7] The only departure from the general pattern depicted in Hearing Exhibit KCP&L-122 occurred in 2008 when prices spiked briefly but KCP&L's off-system sales and margins did not increase because of a longer than planned outage at the Wolf Creek Nuclear Operating Station. *See* Ex. 13, F. Dana Crawford Rebuttal Testimony (Mar. 11, 2009) at 5 and Schedule FDC-11(HC), *In re Kansas City Power & Light Co.*, Case No. ER-2009-0089. The parties agreed in Section 29 of the Non-Unanimous Stipulation and Agreement (Apr. 24, 2009) that all pre-filed testimony may be admitted into evidence, which Commission ordered be done in Paragraph 10 of its Order Approving Non-Unanimous Stipulations and Agreements and Authorizing Tariff Filing (June 10, 2009). KCP&L requests that the Commission take official notice of these facts under Section 536.070(6).

exceeded the 25th percentile benchmark set by the Commission since 2006, although by varying amounts. However, if OSS exceeds the benchmark by, for example, $10 million, the company would face an incremental loss of only $500,000. This hardly seems the monumental disincentive that the Industrials have tried to establish.

214. On the other side of the equation, if OSS margins fall short of the benchmark by $10 million, the company would face an incremental loss of over $5 million. In other words, KCP&L and its shareholders would be 10 times worse off if the Company missed the mark by $10 million than if it surpassed the mark by that amount. This asymmetrical mechanism clearly demonstrates that KCP&L has strong incentives to exceed the OSS margin placed into rates by the Commission, not simply to hit the benchmark or risk missing it.

2. The Asymmetrical Mechanism

215. In response to questions from Commissioner Davis, Mr. Schnitzer analyzed the proposal by the Industrials and Staff to raise the level of OSS margin to 40%.

> On the policy issue, the question before you is so long as the -- the treatment of off-system sales margin is asymmetric, with respect to the shareholder as it is presently, which is to say that any off-system margins less than 25% come out of the shareholder's pocket and any off-system margin in excess of 25% go 100% to customers, putting aside the allocation issue for a moment between Kansas and Missouri, that's a heads the shareholders lose and tails the shareholders break even kind of a regulatory paradigm.
>
> And in that paradigm, so long as you continue that policy, it seems that fairness would dictate that the off-system margin baked into rates as it were, should be low, around the 25th percentile or somewhere in that vicinity ....

See Hearing Tr. at 4827. Mr. Schnitzer reasoned that since this system left KCP&L with only a 25% chance of suffering a loss, whereas Staff and the Industrials would raise the chance of loss to 40%, "that seems hardly -- to my mind the proper balancing of interests." *Id.*

216. As Mr. Blanc testified, the Regulatory Plan expressly prohibits any kind of sharing mechanism. Section III(B)(1) contains a specific provision which requires that all OSS

revenue and costs "will continue to be treated above the line for ratemaking purposes." *See* Hearing Tr. at 3375-76. KCP&L specifically agreed not to propose "any adjustment that would remove OSS from its revenue requirement determination in any rate case" or otherwise "be excluded from the ratemaking process." *Id.* at 3376. *See* § III(B)(1)(j) at p. 22, Stipulation and Agreement, *In re Proposed Experimental Reg. Plan of Kansas City Power & Light Co.*, Case No. EO-2005-0329 (filed Mar. 28, 2005). Commissioner Davis observed that KCP&L did not request any kind of sharing mechanism in this case, but, as Mr. Blanc pointed out, that was because of the Regulatory Plan, not the Kansas/Missouri allocation issue. *See* Hearing Tr. at 3400.

217. In KCP&L's situation, any revision to the current policy would require a thorough consideration of all relevant factors. This is especially true because KCP&L does not have access to a fuel adjustment clause. By contrast, in Kansas the Company is permitted to use a fuel adjustment clause where OSS margins are, in effect, set at zero, as explained by Mr. Blanc. *See* Hearing Tr. at 3409-10.

218. If a utility like KCP&L would have a significant portion of its earnings coming from OSS margin, a more symmetrical policy of sharing risks and benefits must consider "a series of significant financial risks for that utility in terms of whether it would be able to meet debt covenants and coverage ratios" that would affect its economic well being. *See* Hearing Tr. at 4866 (Schnitzer). In the meantime, this case must be decided upon the record and pursuant to the Regulatory Plan which was approved by the Commission. Today the record establishes in this proceeding that OSS margins should continue to be set at 25%, as they have been since 2006. Any excess margin over that amount should continue to be flowed back to customers with interest, as the Commission determined in the 2007 rate case.

3. The Industrials' Last-Minute Complaints on the NorthBridge True-Up

219. The Industrials raised several objections to the true-up figures sponsored by Mr. Schnitzer and the NorthBridge Group, all of which could have been raised in rebuttal or surrebuttal in the case in chief. Nevertheless, Mr. Schnitzer dealt with these in summary fashion during his testimony, noting how they were not valid.

220. First, the Industrials complained of differences in retail load between what NorthBridge estimated to be available for sale in the OSS market, as compared with KCP&L's historical "fuel run" data which is based on historical information. As Mr. Schnitzer testified, approximately 80% of the difference raised by the Industrials "is explained by the fact that we included a spinning reserve requirement in determining how much energy was available to sell in the off-system markets." *See* Hearing Tr. at 4835.

221. This is illustrated by comparing Mr. Meyer's figure in his True-up Rebuttal Testimony at 6, line 22, which is virtually identical to the load figure contained in KCP&L witness Burton Crawford's Schedule BLC2010-4 (HC) to his Direct Testimony. *See* Hearing Exhibit KCP&L-15. There is no mention of spinning reserves in the lines setting forth the megawatt hours of "Retail Load" and "Firm Wholesale Obligations" (under the "Uses of Energy" heading). However, it is clearly indicated in the NorthBridge assumptions relating to "Firm Load" that spinning reserves is considered along with "Contract Commitments" for retail and wholesale load. *See* Hearing Exhibit KCP&L-58, Schnitzer Direct Testimony, Schedule MMS2010-5 ("Firm Load"). This should have been apparent to the Industrials as the updated version of this schedule was provided to them by the Company in response to their Data Request 18-2, where firm load obligations were defined as including both contract commitments and spinning reserves. *See* Hearing Exhibit KCP&L-124 (HC) at p. 3.

222. The Industrials' witness Mr. Meyer failed to consider this critical factor in operating reserves. As Mr. Schnitzer noted:

> So in effect, what Mr. Meyer has said is ... let's calculate the amount available to sell off-system assuming we can sell operating reserve. And that, it's my understanding, is not allowed as a matter of reliability rules. And even if it were allowed, it would [be] inadvisable because it would jeopardize reliability.

See Hearing Tr. at 4835.

223. The Industrials also raised an objection regarding the prospective load that the NorthBridge Group used, compared to the historical level that Mr. Crawford used in his testimony, to which Mr. Meyer referred. Given that the NorthBridge Group uses "a prospective period in the load growth that is forecast ... to occur between now and then" and not a purely historical level, the $9 million adjustment made by Mr. Meyer "is entirely improper in my view." *See* Hearing Tr. at 4835 (Schnitzer).

224. Another point raised by the Industrials is the difference between the outage schedule quoted by KCP&L and that of Mr. Meyer. The obvious difference is that Mr. Meyer took a date beginning on May 4, 2010, whereas KCP&L's schedule began on May 1, 2011. *See* Hearing Exhibit KCP&L-1216, Meyer True-up Rebuttal Testimony, Schedule GRM-TU-2. Given that the spring is the typical time for scheduling unit outages, a simple comparison between the Industrials' schedule and that of the company shows that Mr. Meyer's movement of four days accounts for the differences in outage days. More importantly, Mr. Schnitzer stated that he recalculated the effect of the outage using Mr. Meyer's dates, and "at the 25th percentile the effect is less than a million dollars." It's about $800,000. *See* Hearing Tr. at 4836.

225. Michael Schnitzer also noted that the Industrials' true-up testimony still relied on the outdated OSS margin figures that were first set forth in his June 2010 direct testimony. His

updated figures, based on more accurate information, was supplied in his true-up direct testimony on February 22, 2011. *See* Hearing Tr. at 4819-20, 4836-39.

226. Finally, the Industrials suggested that KCP&L would make significant sums in the OSS market through use of "the around-the-clock (ATC) prices used by KCPL in its true-up testimony." *See* Hearing Exhibit KCP&L-1216, Meyer True-up Rebuttal Testimony at p. 6, ln. 7. As Mr. Schnitzer noted, KCP&L's sales "are disproportionately off-peak" and "generally at a lower price than the around-the-clock price on average." *See* Hearing Tr. at 4848. Mr. Meyer ignored the off-peak prices contained in KCP&L's true-up testimony which were set forth in Hearing Exhibit KCP&L-124, the Company's response to the Industrials' data request. That document contained all the pricing inputs to the NorthBridge model, including weekend and off-peak prices that were significantly lower than the around-the-clock prices. Given the decline in natural gas prices since the end of 2010, and their continuing decline in early 2011, the estimated OSS sales and revenues from the Industrials is clearly inaccurate. *See* Hearing Tr. at 4848-49.

4. The Additional Capacity of Iatan 2

227. Mr. Schnitzer cleared up the confusion expressed by both Staff and the Industrials regarding the projected 25th percentile for off-system sales coming from Iatan 2. As he explained during the in camera session, the 25th percentile figure is comprised of a significant amount of projected sales from Iatan 2, as well as a significant amount from the rest of the KCP&L generation fleet. *See* Hearing Tr. at 4819-20, 4836. All of this must be kept in perspective, however, as "[t]here is no guarantee that the actually realized margin will increase …." *See* Hearing Exhibit KCP&L-116, Schnitzer True-up Direct Testimony at p. 3.

228. While OSS margins "should increase," Iatan 2, like all other assets in KCP&L's generation fleet, is subject "to price risk on the sale of its output (or of the output of other units freed up for sale by adding Iatan 2)." *Id.* As noted at the outset of this discussion, price and

volume—the critical variables mostly beyond KCP&L's control—will determine whether the Company hits the percentile set by the Commission. Mr. Schnitzer cautioned that "the potential volatility in off-system margin … actually increases with an increase in available capacity for sale, other things being equal." *Id.*

229. It is for all these reasons that OSS margins should continue to be set at the 25th percentile with any profit above that level returned to customers with interest, as previously ordered by the Commission.

C. KCP&L's Rate Increase Regarding Fuel Cost is Supported By the Record

230. The Industrials claim at p. 69 of their brief that KCP&L did something wrong by adopting the Staff's fuel expense number. In fact, it is very common for KCP&L or Staff to adopt each others positions on issues as the case progresses and up until the final Staff reconciliation filing. Contrary to the Industrials' accusation that KCP&L somehow hid its adoption of Staff's fuel expense position, KCP&L alerted all the parties in true-up rebuttal testimony that it had been working closely with Staff in the reconcilement process, that there was a need to update the respective revenue deficiencies, that the process would continue through the filing of Staff's final reconciliation on March 2, and that KCP&L's revised position would be reflected in that reconciliation. *See* Hearing Exhibit KCP&L-118, Weisensee True-Up Rebuttal Testimony at p. 8. In addition, page 1 of Staff's final reconciliation (Hearing Exhibit KCP&L-328) shows that KCP&L's revenue deficiency is $66 million.

231. In preparing the final reconciliation, there were scores of differences between KCP&L and Staff where the KCP&L accepted Staff's position including allocation differences, immaterial differences, differences in approach to the true-up and differences that have existed throughout the case but have not been made an issue. Some of these adoptions of Staff's

positions resulting in increases to KCP&L's revenue requirement some resulted in decreases. The Industrials are only complaining about the increases to the revenue requirement.

232. With regard to Staff's fuel expense number, KCP&L accepted the Staff's position as a consequence of adopting Staff's sales revenues. Due to the matching principle, if KCP&L uses the Staff's sales revenues when calculating revenue requirement, it also needs to use Staff's system requirements for fuel used to produce those sales. The adoption by KCP&L of the Staff's revenue numbers is found on line 74 of page 2 of 5 of the Staff's March 2 reconciliation. *See* Hearing Exhibit KCP&L-328. The adoption of Staff's fuel expense number is found on line 102 of page 2 of 5 of the Staff's March 2 reconciliation. *See* Hearing Exhibit KCP&L-328. Both of these items, as the Industrials' acknowledge, are components of the $9,783,534 increase in KCP&L's case shown on line 1 ("Sub-total of Adjustments to KCP&L Revenue Requirement) of page 1 of 3 in Hearing Exhibit KCP&L-328.

233. As shown above, there is ample evidence for the Commission to adopt the position of Staff in this case as the new fuel expense number is contained in the Staff's reconciliation. *See* Hearing Exhibit KCP&L-328. Staff's reconciliation is supported by its audit and Staff would support each of the numbers contained in the reconciliation as the correct amount for KCP&L's cost of service. Once KCP&L accepts Staff's numbers on an issue, like this one, involving only Staff and KCP&L, there is nothing further for the Commission to decide. The Commission noted at p. 64 of its Report and Order in KCP&L's rate case ER-2006-0314 that since KCP&L had accepted Staff's fuel and purchased power costs there was no issue for the Commission to resolve. The same holds true in this rate case.

234. The Industrials also argue that the Commission should not utilize the Staff's fuel expense number since KCP&L would have more experience with its fuel costs. This argument

ignores the fact that KCP&L's experience with its fuel costs led it to adopt Staff's fuel expense number. The Empire case cited by the Industrials (ER-2006-0315) does not apply to this case as Empire and the Staff were each advocating different fuel models and the Commission chose the KCP&L's model. In this case, the Staff and KCP&L have agreed to Staff's position and since no party has put forth evidence as to why this number does not reflect KCP&L's cost of service, it should be adopted by the Commission.

D. Transition Cost Recovery

235. The Commission thoroughly considered the proper treatment of transition cost recovery in its Report and Order in the joint application to merge the operations of Great Plains Energy, Inc. (*i.e.*, KCP&L) and Aquila, Inc., *In re Great Plains Energy, Inc.,* Case No. EM-2007-0374 (Jul. 1, 2008) (Merger Order). The Commission found that the companies should be allowed to defer and amortize the merger transition costs over a five-year period so long as the transition costs were reasonable and prudent and the companies could demonstrate that the synergy savings exceeded the level of the amortized transition costs. Merger Order at 241.

236. With regard to the first prong of the Commission's two-prong test, there has been no testimony provided by any party which challenges or even questions the reasonableness or prudence of the merger transition costs. In fact, on several occasions at the evidentiary hearing, both Staff counsel and Staff witness acknowledged that the transition costs incurred by the company were not unreasonable or imprudent. *See*, *e.g.*, Hearing Tr. at 3448, 3470, 3489.

237. With regard to the second prong, there has been no testimony by any party which disputes that the Companies have demonstrated that the synergy savings exceed the level of the amortized costs. *See* Hearing Exhibit KCP&L-35, Ives Direct at pp. 4, 7-10; Exhibit KCP&L-230 Majors Rebuttal at 7-8; Hearing Tr. at 3472. In fact, the opposite appears to be the case -- Staff and the Industrials are vexed that the synergy savings more than exceed the amortized

transition costs. As a result, Staff has come up with its own test for transition cost recovery--Staff proposes netting the transition costs against synergy savings retained by the company. Staff and the Industrials believe it would be unreasonable to recover transition costs that have already been recovered through regulatory lag. *See* Hearing Tr. at 3497.

238. The position of Staff and the Industrials is contrary to the Commission's pronouncements in the Merger Order. In that order, the Commission explicitly authorized recovery of merger synergy savings through regulatory lag. Merger Order at 238. Over the first five-year period, the total operational synergies projected to result from the merger were $305 million, and $755 million over the first 10-year period. *Id*. at 234. The Commission not only found these estimates to be "accurate, realistic and achievable," but also recognized that "the synergies actually realized from the merger have a very high probability of exceeding the [company's] estimates." *Id*. at 238. In short, the Commission was well aware of the level of synergy savings the companies expected to achieve and it still explicitly found that there was "no detriment to customers" by allowing the companies to recover synergy savings through regulatory lag. *Id*. at 120 and 238; *see also* Hearing Tr. p. 3473.

239. The only record evidence Staff found to support its gross departure from the Commission's order is boilerplate language which appears at the back of the Merger Order, and indeed every Commission order. In its Initial Brief, Staff also asserts that KCP&L's witness agrees with Staff that it would be unreasonable to recover transition costs that were recovered through retained synergies by means of regulatory lag. Staff's Initial Brief at p. 145. However, Staff has misstated KCP&L's witness' position. KCP&L's witness Darrin Ives was asked: "Do you think it would be -- would it be unreasonable for KCP&L and GMO and GPE shareholders to recover transition costs that have already been recovered … through regulatory lag?" Hearing

Tr. at 3470. Mr. Ives responded: "I have to answer that question no, because I don't believe they've been recovered through regulatory lag." *Id*. at 3470-71. Transition costs have not been recovered through regulatory lag because the Commission hasn't authorized recovery yet. According to Mr. Ives: "The merger order specifically concluded that we should defer and amortize those costs over five years subject to an evaluation by the Commission as to reasonableness and prudence and our ability to demonstrate to the Commission that synergies exceeded -- this set of cases is the first set of cases -- we're having an opportunity to make that demonstration." *Id*. at 3476. When Staff counsel did not get the answer she wanted, she rephrased her question to state: "Hypothetically, in answering the question the way it was asked -- the question the way it was asked it: Would it be unreasonable for KCP&L and GMO to recover costs assuming that they were recovered through regulatory lag?" *Id*. at 3471. Mr. Ives responded: "As that question was stated, the answer would be yes." *Id*. Clearly it would be unreasonable for a company to hypothetically recover costs that have already been recovered. However, as stated by company witness Darrin Ives, that is not the case regarding transition costs. His response is clear and unequivocal: "In my opinion, based on the merger order, we have not [recovered any transition costs.]" *Id*.

240. In its initial brief, Staff asserts that it performed an analysis of the Administrative & General ("A&G") expenses for KCP&L and GMO, and other electric utilities in the region. Staff's Initial Brief at p. 147. Much like the other efforts of Staff in the audit of transition costs, in actuality Staff did not perform an analysis. It presented a table with high-level benchmarking results. Utilization of benchmarking results with no analysis of underlying support is reckless and can result in incorrect assumptions and decisions. Staff has recognized repeatedly in testimony and its Initial Brief that the companies have indeed achieved significant synergy

savings—which will have continuing benefits to customers once included in rates in this case. Therefore, Staff's unanalyzed benchmark data should be disregarded by the Commission.

241. If Staff's unsupported position is adopted, the companies will have to write off millions of dollars of these accumulated costs -- costs that were incurred to achieve the undisputed synergy savings and accumulated based upon this Commission's support for deferral and amortization in the Merger Order. Specifically, the projected true-up value of Missouri jurisdictional transition costs is $41.8 million. Hearing Exhibit KCP&L-37, Ives Surrebuttal at p. 3.

242. In its Initial Brief, Staff says that the question before the Commission is whether or not to allow KCP&L and GMO, and consequently GPE shareholders, a double recovery of the transition costs relating to the acquisition of Aquila. Staff's Initial Brief at p. 147. The actual question before this Commission is whether the companies have complied with the Merger Order and whether the companies have delivered the synergy savings contemplated in that order while incurring the level of transition costs contemplated. The answer to those questions, supported by the substantial and competent evidence in this case, is a resounding yes. The Commission created an expectation in the companies in its Merger Order, that so long as the transition costs were deemed reasonable and prudent, and the companies could demonstrate that synergy savings exceed the level of amortized transition costs, the companies would be permitted to recovery the transition costs in rate. Merger Order at 241. The companies have fully complied with the Merger Order. Further, no party to this proceeding has either challenged the reasonableness and prudence of the claimed transition costs or challenged the calculated synergy savings. As a result, there is no evidence on which the Commission could base a different conclusion than in

the merger case. Therefore, the companies should be permitted to recover the merger transition costs in rates over five years beginning with rates effective from this case.

243. In their Initial Brief, the Industrials essentially adopt and mirror Staff's position on this issue claiming that KCP&L has recovered the entirety of the transition costs through the application of regulatory lag to merger synergy savings. Industrials' Posthearing Brief at 56. The Industrials argue that in three rounds of testimony and cross-examination at the evidentiary hearing, "KCPL has never disputed that that these synergy savings materialized or that, during the lag between rate cases, KCPL retained the entirety of these synergy savings." *Id.* The Industrials continue to argue this point for several pages in its brief. The Industrials are correct. The Companies, in fact, have clearly stated that *more* than the projected synergy savings have been realized and that those savings have been retained by the Companies by means of regulatory lag. Given the Commission expressly authorized recovery of synergy savings through regulatory lag, the Companies fail to see the point in arguing about an acknowledged fact. S*ee* Merger Order at 238. Moreover, the Commission knew the amount of synergy savings the Companies were estimated to retain, but also recognized that the actual retained synergy savings could be more than the estimates. *Id.* at 234, 238.

244. However, despite the Industrials' (and Staff's) attempts to argue otherwise, these retained synergy savings were never intended to offset merger transition costs. The recovery of transition costs was handled separately by the Commission. The Commission found that the companies should be allowed to defer and amortize the merger transition costs over a five-year period so long as the transition costs were reasonable and prudent and the company could demonstrate that the synergy savings exceeded the level of the amortized transition costs. Merger Order at 241. As stated previously, no party has challenged the reasonableness and

prudence of the transition costs. Further, no party has challenged that synergy savings exceed the level of the amortized transition costs.

245. The following points in KCP&L witness Ives Surrebuttal Testimony (Ex. KCP&L-37), p. 11 summarize why the arguments of the Industrials and Staff should be rejected:

> 1) The companies have acted in good faith and been completely transparent in regards to the transition cost recovery requested and the synergy savings being retained and benefiting customers;
> 2) The companies' request is consistent with and supported by the Commission's Merger Report and Order;
> 3) The companies have maintained a synergy savings tracking mechanism demonstrating that synergy savings exceed transition cost recovery amortization as ordered by the Commission in the Merger Report and Order;
> 4) The requested transition cost recovery is less than the amount projected in the Merger case; and
> 5) The synergy savings benefit to customers is projected to be more than 3 times the $51.8 million of transition costs the companies seek to recover. Moreover, customer benefits from synergy savings over the first ten years post-transaction will be more than 12 times the level of transition cost recovery requested. These customer benefits exceed the amount projected in the Merger case.

E. Hawthorn 5 Settlement

1. Overview

246. The Hawthorn 5 Settlement issue pertains to a settlement received from Babcock and Wilcox in 2007 primarily for replacement power costs during an outage to replace the catalyst in the selective catalytic reduction system, and for a settlement received from Siemens in 2008 primarily for replacement power costs due to a transformer outage. It is KCP&L's position that in both instances, ratepayers never paid the outage-related fuel and purchased power costs, therefore they should not receive the settlement proceeds. In other words, ratepayers should not be reimbursed for costs they did not pay. To account for the settlement proceeds above the line would result in an undeserved windfall to the customers at the company's expense.

247. Staff has attempted to argue that all the increased costs to KCP&L as a result of the outages "were and are currently being paid by KCPL customers in utility rates." Hearing Exhibit KCP&L-210, Staff Report at pp. 109, 111. As noted by KCP&L witness Curtis Blanc, however, there is no way KCP&L's customers have paid for any increased costs because KCP&L didn't have a fuel adjustment clause at the time of the outages. In other words, there was no mechanism in place to pass the company's replacement fuel costs on to customers. In addition, KCP&L normalizes fuel and purchased power expense in its rate cases, so test year anomalies are disregarded. Further, there were no incremental payroll costs incurred by the company. In other words, no additional personnel were assigned to Hawthorn as a result of the outages. Finally, it is inappropriate for Staff to take these unusual, non-recurring, out-of-period settlement proceeds and attempt to set rates based on them. Not only are they not reflective of the ongoing cost of service for the company, Staff's position constitutes retroactive ratemaking. *See* Hearing Exhibit KCP&L-8, Blanc Rebuttal at pp. 49-50, 51-52.

248. Staff has attempted to discredit Mr. Blanc's credentials. Staff's Initial Brief at pp. 85-86. Although he indicated he does not have specific training in cost of service, fuel or accounting, Staff conveniently fails to acknowledge Mr. Blanc's undergraduate degree in business, including several accounting classes. Hearing Tr. at 3667. He also testified that he participates in the ratemaking process and understands how it works. *Id*. at 3668. Regardless, Mr. Blanc's lack of specific cost of service, fuel or accounting experience does not mean that he is unqualified to render an opinion on what is essentially a regulatory issue. When questioned at the evidentiary hearing, Mr. Blanc exhibited a solid understanding of regulatory concepts generally, and the appropriate treatment of the settlement proceeds specifically. *See*, *generally*, *id*. at 3668-3707. Significantly, Mr. Blanc stated unequivocally that extra costs associated with

the outage were not passed on to ratepayers because of the normalization process which removes abnormal expenses. *Id*. at 3706.

2. Selective Catalytic Reduction ("SCR") System Settlement

249. Specifically with regard to the SCR outage, Staff claims that the company incurs higher costs continuing today and will in the future, relating to the failure of the SCR to meet the performance standards of the contract. Staff's Initial Brief at pp. 87-88. Interestingly, to KCP&L's knowledge, Staff has never claimed that the contract was improper.

250. Next, Staff implies that the company covertly moved the settlement payments below the line so they would not know about them. Staff's Initial Brief at p. 88. That is not correct. The amounts were recorded in the proper "above-the-line" accounts (primarily Purchased Power expense). However, in the 2009 case, the company made a very visible rate case adjustment to remove these costs from cost of service for the reasons cited above. There was nothing secretive nor inappropriate about the company's action, despite Staff's implication to the contrary.

251. Finally, Staff believes the company incurred additional personnel costs related to, among other things, negotiating the settlement and involvement in the SCR performance. *Id.* at 92-94. As stated in testimony and brief, the company incurred no additional personnel-related costs as a result of the outage. *See* Hearing Exhibit KCP&L-8, Blanc Rebuttal at pp. 49-50, 51-52. Employee costs are non-incremental costs; the employees will be paid whether or not they work on Hawthorn issues.

3. Transformer Settlement

252. Much of the above discussion on the SCR settlement proceeds is equally applicable to the transformer settlement proceeds and will not be repeated here. However, Staff raised an additional issue of which merits further discussion. In its Post Hearing Brief, the

company likened treatment of these proceeds to the removal of $16.9 million in subrogation payments in Case No. ER-2007-0291 ("0291 Case") related to the Hawthorn 5 boiler explosion. In that case, the Commission agreed with KCP&L's removal of those proceeds from test year consideration. The Commission found that the proceeds were unusual and non-recurring, and should therefore be excluded from the test period. The Commission also found that customers never paid the costs for which the settlement provided reimbursement. *Id*. at 50-51. In that case, Staff strongly believed that the costs associated with the subrogation payments were paid for by customers, even though there were no rate cases in those days. Now, in order to distinguish the current settlement proceeds, Staff is admitting that customers never paid the costs associated with the subrogation payments. Staff's Initial Brief at pp. 102-103. The transformer settlement proceeds (and SCR settlement proceeds) are entirely analogous to the subrogation proceeds in the 2007 case and Staff's attempts to employ revisionist history should be rejected.

4. Conclusion

253. KCP&L normalized fuel and purchased power expense in the years related to the Hawthorn 5 SCR and transformer outages. Further, the company did not have a fuel adjustment clause which would have permitted the pass through of those increased fuel and related costs. Therefore, customers did not pay any additional expenses associated with the outages. Likewise, customers should not receive the benefit of settlement proceeds that were intended to reimburse the company for its real, additional fuel and related costs. Hearing Tr. at 3706. The Commission should therefore reject Staff's attempts to include these unusual, non-recurring, out-of-period settlement proceeds in KCP&L's cost of service. To do so would constitute retroactive ratemaking. In addition, it would violate the matching principle that if customers receive the benefit of the proceeds, then they should have paid the costs being reimbursed by the settlement.

It is only fair that KCP&L should receive the reimbursement for the extra costs it absorbed during the outages.

F. Rate Case Expense

254. KCP&L and GMO seek to recover actual rate case expense through December 31, 2010 (true-up date), with corresponding amortization of such costs over a two-year period beginning with the effective date of new rates in this case. Recovery of rate case expense is proper as Company witness John Weisensee noted in response to Judge Pridgin's question that ratepayers benefit from having skilled experts and advocates work on this rate case involving Iatan prudence due to the fact that the results will affect the Company for years to come. Tr. 3637.

255. In addition, consistent with prior rate cases, KCP&L and GMO propose that rate case costs incurred after the true-up date be carried forward to the next rate case for inclusion in rates, subject to a review from the Staff and other parties. *See* Hearing Exhibit KCP&L-117, Weisensee True-Up Direct Testimony at pp. 4-5 and Hearing Exhibit GMO-59, Weisensee True-Up Direct Testimony at pp. 3-4, 5. Although Staff disputes the amount that the Companies should be allowed to recover, Staff does not dispute the process of the recovery. *See* Hearing Exhibit KCP&L-310, Majors True-Up Rebuttal Testimony.

In its Initial Brief, Staff first spends an inordinate amount of time criticizing the Companies' timeliness in providing documentation which Staff claims was required "to complete a thorough audit" of the Companies' rate case costs. Staff's Initial Brief at 104. Staff disparages KCP&L and GMO for the six-month and five-month delay, respectively, from Staff's first request for rate case invoices and when the full documentation was provided. *Id.* at 105-106. What Staff's Initial Brief really highlights, however, is that the Companies responded in a timely manner to each request, and that Staff itself caused significant time delays between

receiving a response from the Companies and when it issued follow-up data requests seeking additional information. In an example Staff used in its Initial Brief, Staff sent Data Request (DR) No. 141 on June 25, 2010. KCP&L responded on July 12, 2010. In its response, KCP&L asked for clarification. Staff didn't follow up on KCP&L's request for clarification until September 3, 2010, over six weeks after KCP&L's initial response was provided. KCP&L responded on September 23, 2010. Staff waited another five weeks before issuing another follow up DR on November 3, 2010, seeking full invoice detail for the first time. KCP&L responded on November 24, 2010. *Id*. at 104-105.

256. Staff provided similar information in its Initial Brief about DR No. 154 sent to GMO. Staff sent an initial DR to GMO on July 20, 2010. GMO responded on August 9, 2010. Incredibly, Staff waited approximately 3 ½ months, until November 16, 2010, before seeking follow-up information, to which GMO responded on December 3, 2010. Staff sent additional follow up on December 18, 2010, seeking full invoice detail for the first time, to which GMO responded on December 30, 2010. *Id*. at 106.

257. Staff's attempts to excuse its failure to provide a direct case for rate case expense does not rest solely on its claims that KCP&L and GMO failed to timely respond to its data requests. As Staff's own evidence demonstrates, Staff itself caused significant delays by taking so much time between receiving the Companies' responses and issuing follow-up requests.

258. Staff next takes issue with certain vendors used by the Companies for legal and other services necessary to prepare and defend the current rate cases. Although no support or specific detail is provided, Staff's makes two primary arguments: certain services are duplicative and the rates for certain vendors are excessive. Staff criticizes the Companies for doing precisely

what Staff itself did to manage a complex, litigated proceeding—dividing up responsibility for trying the case among several lawyers.

259. Each law firm listed on page 108 of Staff's Initial Brief had a specific role in these cases. Some of them (Duane Morris and Morgan Lewis & Bockius LLP, for example), had responsibilities outside the actual hearing and therefore did not make appearances in the rate case. Rush True-Up Rebuttal at 5. The Polsinelli and Spencer Fane law firms had very little involvement in the Missouri rate cases, but did respond to a particular Staff data request. *Id.* The invoices from those firms reflect their limited involvement. Glenda Cafer of Cafer Law Office LLC was used to address the Missouri Retailer's witness on prudence in order to assist the Companies' two other attorneys (Jim Fischer and Chuck Hatfield) who were already assigned several prudence witnesses each. *Id.* Schiff Hardin assisted in "testimony preparation, coordination of prudence strategy, document analysis and review, preparation of exhibits, legal research regarding prudence, analysis of prior MPSC disallowances, cross examination preparation, and issue identification." *Id.* at 6. SNR Denton focused solely on non-prudence issues. *Id.* at 5. Fischer & Dority had responsibility for both prudence and non-prudence issues. Morgan Lewis was involved in the Iatan 1 audit (0259 Case), which was consolidated into the current rate cases. *Id.* at 2. None of these law firms had the same roles or responsibilities, nor has Staff been able to provide any support or specific detail to so prove.

260. The practice of dividing up responsibility for a rate case is not unusual. In fact, Staff itself assigned several attorneys to handle specific issues and/or witnesses. For example, at least four separate Staff attorneys in these cases "cross-examined the Companies prudence witnesses and produced Staff's prudence witnesses. In addition, Staff took the depositions of KCP&L witnesses Downey, Nielsen, Roberts, Meyer and Archibald using a different attorney

than the Staff attorney that cross-examined these witnesses at hearing." *Id*. at 4-5. Staff's disallowances based on duplicative legal expenses holds the Companies to a standard that Staff itself doesn't follow.

261. Staff also claims that the consulting services of NextSource are duplicative of the services provided by KCP&L's head of the regulatory affairs department. The Companies will not repeat the specific arguments made in its Post-Hearing Brief which demonstrated that there was no double recovery of Mr. Giles' and Mr. Blanc's salaries in the Companies' rates because the salary of only one full time equivalent employee is built into the rates, and further that Mr. Giles performed duties as an outside consultant separate and aside from the duties performed by Mr. Blanc in his role as head of regulatory affairs. *See* Post-Hearing Brief of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company at 173-74. Because Staff was unable to demonstrate that NextSource's services were duplicative of the services provided by the Companies, Staff's disallowance should be rejected.

262. Staff's true up testimony proposes to disallow all Morgan Lewis legal fees. Staff's argument is that the expenses were not related to the rate case, the work was duplicative of other attorneys work and the rates were excessive when compare to local attorneys. Rush True-Up Rebuttal, Ex. KCP&L-115, p. 2. Regarding the first argument, Morgan Lewis was employed in the 0259 docket which has been consolidated with the current rate case. The 0259 docket was an on-the-record proceeding to determine the status of Staff's Iatan 1 audit. This docket was central to the rate case in that the Staff was to explain every aspect of the Iatan 1 construction audit. That audit is part of this rate case and the data requests in that docket are linked to this rate case. *Id*. There is no question that the 0259 docket is part of this rate case and Morgan Lewis fees are legitimate rate case expenses.

Staff's removal from rate case expense of all Morgan Lewis fees is improper because it doesn't recognize that someone had to perform the work that was done. The Company established that the work that Morgan Lewis attorney Van Gelder was not duplicative of other attorney's work, since she deposed and cross examined the Staff's witnesses in the 0259 case while other attorneys presented the live testimony of KCP&L witnesses. *Id*. at 3. Ms Van Gelder's questioning of Staff was instrumental in the Company's discovery of the reasons why Staff's audit was behind schedule and the presentation of evidence to the Commission which showed that the Company's discovery process was in no way responsible for Staff's delay. *Id*.

The Company also established that Morgan Lewis was chosen for the 0259 case because the company's local attorneys were engaged in other matters and the belief that the firm was the right firm to address the issues in the case. *Id.* at 4. Staff's total disallowance of the Morgan Lewis fees should be rejected by the Commission as the work performed was not duplicative of other law firm's work and was necessary for the Company to present its rate case to the Commission.

263. Finally, Staff disallows the costs associated with Communication Counsel of America ("CCA") based on duplication of services when it makes the assumption that witness preparation are typically performed by counsel. *See* Hearing Exhibit KCP&L-309, Majors True-Up Direct Testimony at p. 8. Contrary to Staff's "assumption," the fact is that CCA was engaged to prepare the Companies' Iatan prudence witnesses. In these preparation sessions, counsel for the Companies did, in fact, prepare mock cross and redirect examination for the witnesses. CCA reviewed the witnesses' responses and assisted the witnesses in effective communication techniques. *See* Hearing Exhibit KCP&L-115, Rush True-Up Rebuttal Testimony at p. 7. CCA

training specifically targeted the Iatan prudence witnesses because these were the last rate cases under the Regulatory Plan whereby rate base treatment of Iatan would be considered.

264. It was important to the Companies that their prudence witnesses, many of whom had never testified before a commission prior to the rate case hearing in Kansas last fall, would be able to communicate to this Commission effectively. In addition, based on the number of prudence reports ordered by the Commission, the Companies correctly determined that the Iatan prudence issue would be predominant. CCA's training was instrumental in preparing the Companies' prudence witnesses on the myriad issues likely to be addressed at the hearing. CCA was able to provide specific, in-depth instruction to the Companies' prudence witnesses. Part of its training included recorded sessions by professional videographers. *Id.* at 7-8. These are not the types of routine services typically performed by counsel. Staff's disallowance should therefore be rejected.

265. In addition to proposing disallowances based on its belief that duplicative services were being performed, Staff also proposed disallowances based on its belief that the rates charged by certain vendors are excessive. Staff has the mistaken belief that attorneys' rates are "one size fits all." There are a number of factors that explain why attorneys' rates are not uniform, including, but not limited to, expertise, location, years of experience, etc. This is no different than any other job in the marketplace. *Id.* at 3. In the case of Schiff Hardin, for example, Staff made the unsupported assumption that the Schiff Hardin expenses were duplicative of other law firm expenses charged to the rate cases (addressed above). Staff then substituted the hourly rate charged by Pegasus Global senior consultants for the rate charged by Schiff Hardin. This substitution was inappropriate because the scope of the Pegasus testimony was not the same as Schiff Hardin's. As explained above, Schiff Hardin's role was not limited to

providing a prudence analysis, like Pegasus. Schiff Hardin's work for the Companies required "different skill sets and expertise than Pegasus and therefore compensating Schiff based on Pegasus' rate is not appropriate." *Id*. at 6.

266. Finally, Staff sets out tables on pages 111 and 112 of its Initial Brief which purport to show that rate case expense has increased over seven times from the level of the Companies' last rate case in 2009 to the current rate case. However, Staff's comparison is misleading. On the table on page 111 of its Initial Brief, Staff sets out KCP&L's and GMO's total projected rate case expense as $11 million, which was based on the Company's update in this case. On the table of page 112, Staff shows a total amount of rate case expense for KCP&L and GMO in the 2009 cases of $1.5 million. The amounts on the table on page 112 actually represent the rate case costs recorded through the April 30, 2009 true-up date and do not reflect the total cost of the 2009 rate cases. Per an informal agreement with Staff, (Hearing Exhibit KCP&L-63, Weisensee KCP&L Direct Testimony at p.61), a substantial amount of rate case expense that occurred after the April 30, 2009 true-up date was transferred to the current rate case. As Mr. Weisensee states on pages 22-23 of his KCP&L Rebuttal and page 4 of his GMO Rebuttal, approximately 50% of the total rate case costs in the 2009 KCP&L rate case and 40% in the GMO 2009 rate case were recorded after the true-up in those cases and these costs were transferred to the current rate cases. See Hearing Exhibit KCP&L-64 and GMO-43.

267. Conversely, Staff's amounts shown on p. 111 of its Initial Brief, purportedly representing current case projected costs, inappropriately do include these transfers. Therefore, to make a reasonable comparison of the two cases one must add back the transfer amounts to schedule on page. 112 of Staff's Initial Brief, to determine actual 2009 case costs, and deduct the transfer amounts from page 111 of Staff's Initial Brief, to determine current case estimated costs.

After doing this math the comparison would show that the current case costs are about three times higher than the last case costs, not the seven-fold increase stated by Staff in its Initial Brief.

268. The Industrials take a position on rate case expense for the first time in this case in its Initial Brief. First, the Industrials incorrectly interpreted John Weisensee's testimony at the main Hearing. The Industrials mistakenly believe that KCP&L and GMO are seeking to recover $13.8 million in rate case expense. At the Hearing, the Judge asked Mr. Weisensee for an estimate of rate case expense for the case. He indicated he wasn't sure because it depends on many factors yet to be determined, but the true up amount, reflecting costs recorded as of December 31, 2010, was about $6.1 million (combined KCP&L and GMO). Hearing Tr. at 3634-3635. The Industrials added to this $6.1 million figure the $7.7 million figure that Staff witness Keith Majors cites on page 3 of his True-Up Direct testimony as being the December 31, 2010 true-up accumulated costs, arriving at a total case cost of $13.8 million. The problem with this math is that the $7.7 million amount includes the $6.1 million actual costs at December 31, 2010, in addition to the transfer of costs from the prior rate case as discussed above. Therefore, the Industrials have doubled up on the $6.1 million and arrived at a total case cost much in excess of estimated costs.

269. Next, the Industrials criticize the Companies' use of outside counsel. The Industrials appear to believe that the Companies' in-house counsel should have litigated these rate cases. The Industrials' position ignores the magnitude of the case and isn't consistent with common practice before the Commission. Staff utilized numerous attorneys, and even the Industrials had more than one attorney present at hearing, although the Companies only observed Mr. Woodsmall actually try the case. In addition, although the Industrials only testified on discrete issues, the Industrials' counsel opted to sit in on the vast majority, if not all, of the

hearing. It is unlikely that the Industrials consider its own behavior "extravagant," nor should the Companies' decision to use outside counsel be considered extravagant. *E.g.*, *id.* at 64-65.

270. The Industrials make the unsupported and outrageous claim that "KCP&L completely handed over responsibility for litigating the case to outside counsel." Industrials Brief at p. 5. This claim ignores the fact that in-house counsel sponsored witness Rush in the True-Up portion of the hearing (Hearing Tr. at 2756) and argued a Motion to Strike. *See* Hearing Tr. at 4543. Moreover, in-house counsel also handled issues that settled.

271. Industrials also have a very limited understanding of the word "litigating," as most lawyers would agree that litigation includes the discovery process. The level of discovery was unprecedented in this case and certainly much greater than past KCP&L rate cases. For example, KCP&L in-house counsel handled the time-consuming tasks of responding to Staff's Motion for a Special Master, meeting with Staff and the Special Master on numerous occasions, locating the documents in question, reviewing and overseeing the production of 60,000 pages of documents that were provided to the Special Master from data requests that dated back to January 2009.[8] A majority of this work took place in the weeks before hearing when other counsel were preparing witnesses and getting ready for hearing. During the hearing, the Staff also filed a Motion to Compel for over 18,000 emails and subpoenaed witnesses for deposition and hearing which also required attention from KCP&L's in-house counsel. These are a few examples of the many litigation tasks handled by in-house counsel during this rate case.

272. The Industrials also cite to the 0291 Case transcript (Hearing Exhibit KCP&L-1217) which indicates that previous KCP&L attorneys presented witnesses in that case. What Industrials fail to mention and a check of the entry of appearances in that case will verify, is that

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[8] January 26, 2011 Order and Notice Regarding Discovery Dispute; p. 1.

KCP&L used the same number of outside counsel to try issues (Jim Fischer, Karl Zobrist and Roger Steiner) in the 0291 Case as it did in the current case to try non-prudence issues (Jim Fischer, Karl Zobrist and Susan Cunningham). Thus, the Industrials' comparison of the counsel used in the 0291 Case to the current case is not meaningful as the same number of outside attorneys handled non- prudence issues at both hearings. This is because the Industrials' ignore the fact that the 2007 rate case did not involve any Iatan Prudence issues, nor did it involve any GMO issues. The Iatan Prudence issues took two weeks of hearing time in the current case and involved 13 witnesses alone. The "GMO only" issues took a week of hearing time. The Iatan and GMO issues necessitated the need for more outside counsel than a normal rate case such as the 0291 Case.

273. The Industrials are apparently attempting to make the point that since the salaries of KCP&L attorneys are in rates, unless individuals try the case in the hearing room, they are not earning their salaries. This argument ignores the fact that the in house lawyers have many duties besides appearing in a hearing room. For example, the current general counsel, unlike the previous one, is also KCP&L's head of Human Resources.

274. As for the Industrials' allegations concerning KCP&L's use of outside experts, the fact is that the Company used a combination of employees and outside consultants. Of the 29 individuals who filed testimony on behalf of KCP&L in this case, 11 were outside consultants. For GMO, the number was 31 employees and 12 consultants. Most of these consultants provided testimony in both cases. Unlike the Industrials which employed three outside consultants and relied on Staff witnesses for the rest of their needs, the Company must have a witness for every issue. The Company's use of employees as witnesses, as demonstrated above, shows that it uses its in-house expertise whenever possible.

275. Finally, the Industrials ask that the Commission extend the period over which it normalizes that portion of rate case expenses which it deems recoverable from ratepayers. The Industrials recommend that the Commission normalize the adjusted rate case expense over a four-year period instead of the customary two-year period. *Id.* at 66-67. As mentioned above, the Industrials address the issue of rate case expense for the first time in their Initial Brief. The Companies have requested, and Staff has supported, amortizing rate case expense over a two-year period, consistent with prior KCP&L and GMO/Aquila rate cases. The Industrials have not cited to record support for their out-of-time proposal, because there is none. The Commission should reject the Industrials' proposal because there is no evidentiary basis to support it.

G. Iatan Regulatory Assets

276. The Companies and Staff are in agreement that "If the Commission does not accept Staff's disallowances [regarding the prudence of Iatan 1, Iatan 2 and Common Plant] then it would be proper ratemaking treatment to include those costs in a regulatory asset." *See* Staff's Initial Brief at p. 68. As explained in the Companies' Initial Brief, the Companies do not believe there is competent and substantial evidence in the record to support any of Staff's proposed disallowances related to Iatan Project. *See* KCP&L/GMO Initial Brief at pp. 16-134.

277. However, there continues to be a disagreement between the Companies and Staff regarding the appropriate treatment of carrying costs, including AFUDC, in the event that the Commission finds some expenditures at the Iatan Project to be imprudent.

278. KCP&L has not included any carrying costs in plant-in-service accounts for Iatan 1 and Iatan Common expenditures after April 30, 2009. Nor has KCP&L included any carrying costs in plant-in-service accounts for Iatan 2 expenditures after August 15, 2010. Instead, KCP&L has included the carrying costs in the Iatan 1, Iatan Common and Iatan 2 Regulatory Assets. *See* Hearing Exhibit KCP&L-63, Weisensee Direct Testimony at p. 10.

279. KCP&L agrees that it should not be allowed recovery of carrying costs on expenditures, if any, that the Commission finds to be imprudent. But KCP&L is concerned that the Staff's approach to the Iatan 1 and Iatan 2 Regulatory Assets issue could result in unintentional disallowances if the Commission found that some portion of the Iatan Project expenditures were somehow imprudent and accepted some, but not all, of the Staff's proposed disallowances. KCP&L has booked these carrying costs in the Regulatory Assets, and Staff proposes to disallow these carrying costs in the Regulatory Assets as well as disallow related AFUDC effects (i.e. carrying costs) related to the Staff's prudence disallowances of the Iatan 2 and Iatan Common Projects.

280. The treatment of AFUDC on the amounts disallowed, if any, prior to the applicable in-service date for each portion of the Iatan project must be closely synchronized with the base amount of plant expenditures on which carrying costs are calculated for each portion of the Iatan project after the applicable in-service date. If one level of disallowance is ordered as a reduction of the plant in service amounts but the amount of base costs in Staff's regulatory asset calculation, upon which the carrying costs after the in service date are calculated, is not adjusted to reflect a consistent level of disallowances, then Staff's calculation of the Iatan 2 and Iatan Common regulatory assets will be understated. Staff did not allow an Iatan 1 regulatory asset for any amount of either deferred carrying costs or deferred depreciation, so if the Commission reduces Staff's proposed disallowances related to Iatan 1, then an Iatan 1 regulatory asset must be created for Staff's case.

281. KCP&L contends that the regulatory assets for Iatan 1 and Common and for Iatan 2, should be included in rate base at the amounts calculated by KCP&L until such time as a level of disallowance, if any, has been established. In a like manner, the amount of pre-in-service

AFUDC that would be disallowed must also be synchronized with the level of expenditures disallowed, if any, and be recalculated if the Commission does not accept the full amount of disallowances proposed by Staff.

282. For these reasons, the Commission should reject Staff's proposed disallowances of the carrying costs contained in the Regulatory Assets until it determines whether to adopt some level of Staff's proposed prudence disallowances from plant in service.

H. Fuel Switching

1. Comparative Efficiency of Electric and Gas for Heating

283. MGE has proposed a scheme in the name of energy efficiency that compels KCP&L and GMO, its primary competitor, to provide incentives to the Companies' customers to eliminate their electric usage and convert that consumption to its product—natural gas. Hearing Exhibit KCP&L-220, Reed Direct Testimony at p. 2. The proposal is built on the Full-Fuel Cycle or Source Energy model. *Id*. at 4-11; Hearing Tr. at 3101-02. All traditional, customer-centric measurement of appliance efficiency show electric appliances are consistently more efficient than a similar gas alternative. Hearing Exhibit KCP&L-220, Reed Direct Testimony at p. 10, Table 1. The Full-Fuel Cycle model loads the cost of operation for electrical appliances with the cost of upstream losses. Only then and without any change in efficiency directly benefiting the customer, do the gas appliances surpass electric appliances. MGE asserts that the Commission should accept the non-unanimous and pending Department of Energy recommendation of the Full-Fuel Cycle to shape the policy of this Commission. Hearing Exhibit KCP&L-220, Reed Direct Testimony at p. 5; Hearing Tr. at 3101-02; MGE's Initial Brief at 3. As stated in our initial brief, KCP&L/GMO contends the Full-Fuel Cycle model is misleading to the customer and does not reflect any policy guidance. The Commission should reject the Full-Fuel Cycle as a policy for Demand Side Management programs.

284. Surprisingly, MGE's brief asserts that "the Full-Fuel Cycle approach is not a prerequisite to the adoption of this program." MGE's Initial Post-Hearing Brief at 4. This statement was unexpected because MGE's proposal makes absolutely no sense in the absence of the Full-Fuel Cycle approach. Using a site-based approach will not favor natural gas appliances. Therefore, fuel switching can only be justified by the use of a Full-Fuel Cycle approach. However, the fundamental assumptions necessary to undertake the Full-Fuel Cycle approach are tenuous, unsupported, and subject to wide-ranging errors. *See* Hearing Exhibit KCP&L-26, Goble Rebuttal Testimony at p. 17; *see also*, Hearing Exhibit KCP&L-2209, Review of Site & Full-Cycle Measurement at 39-40. Further, a primary tenet of the Full-Fuel Cycle is environmental impact. MGE has relied heavily upon its assertions that environmental issues would lead the Commission to favor natural gas over electric production. *See*, *e.g.*, MGE's Initial Post-Hearing Brief at 5. Unfortunately, the issues relating to environmental impacts have not been sufficiently fleshed out in this proceeding. MGE's testimony and brief are conspicuously silent with respect to the release of methane, a potent greenhouse gas, caused by the extraction of natural gas. Hearing Tr. at 3130. Hydraulic fracturing of shale formations, the primary method currently used to procure new sources of natural gas, has been linked to fouling of municipal water supplies, release of cancer causing agents into water systems, and home explosions. Hearing Exhibit KCP&L-26, Goble rebuttal at 10-12; *see also*, Hearing Tr. at 3152. To gloss over such major environmental concerns by ignoring the issue raises doubt to MGE's true level of concern regarding the environment. Accordingly, it is illogical for MGE to promote the Full-Fuel Cycle approach to justify natural gas as the "right fuel" and then claim that the Full-Fuel Cycle approach need not be employed by the Commission to endorse its program. MGE's Initial Post-Hearing Brief at 1. The Companies believe the Full-Fuel Cycle approach and

the MGE program proposal are directly linked and the Commission should reject them both in the context of this proceeding.

2. DSM Program Issues

285. The Companies have solid experience implementing energy efficiency programs. Through the course of the Comprehensive Energy Plan, the Companies have implemented thirteen programs representing a broad range of options for customers. Hearing Exhibit KCP&L-54, Rush Direct Testimony at p. 24. The Companies completed the implementation of these programs by working collaboratively with customers, industry representatives and DSM experts to define workable programs. The Companies conducted comprehensive analysis of the programs within the Integrated Resource Planning process and through individual benefit-cost analysis to ensure the programs would provide positive results. MGE comes to this proceeding proposing a program without the benefit of these efforts. MGE's analyses rely entirely on the experience of other companies in distant, winter peaking areas using generalities and broad industry assumptions to support its proposal. Hearing Tr. at 3133.

286. MGE does not allow any consideration for efficient electric options within its proposal. In fact, the MGE proposal does not provide any consideration for any non-natural gas energy source. *See* Hearing Exhibit KCP&L-103 at 2, 3; Hearing Tr. at 3111-13. Yet MGE expects the Commission to accept this plan for the Companies' customers. Review of the MGE brief confirms the flaws in its support as it misrepresents both the MGE and the Companies' analyses. Key elements of the MGE analysis use data that is not specific to Missouri or to the Companies. Hearing Tr. at 3133-34; Hearing Exhibit KCP&L-26, Goble Rebuttal Testimony at pp. 16, 17. Mr. Reed's analyses contain errors and unsupported assumptions that render the results highly suspect. *Id*. at 17. Mr. Goble attempted to correct most of the more serious mistakes, finding that the calculations demonstrate the opposite result of MGE's calculations (*Id.*

at 23-8), a finding not disclosed by MGE's brief. MGE has erroneously argued that reduced energy consumption, occurring primarily in the winter will reduce the Companies' summer peak demands, thereby avoiding transmission and generation capacity costs. *Id.* at 15 and 28. However, this program would have virtually no impact upon the Companies' capital investments in transmission and generation capacity since any potential load savings from reductions in water and space heating loads are unlikely to occur during the summer peak period used to determine capacity needs. *Id.* at 14-16. The Commission should reject this basis for MGE's proposal.

287. A particularly troubling aspect of the MGE proposal is the claim that the Companies' were invited to participate in the design of this fuel switching program. MGE offers a disingenuous reference to single letter between company officers years prior to this case as evidence of an invitation. Hearing Tr. at 3155-60. Further, citing a prior collaboration with the Home Performance with Energy Star program, MGE claims the companies should work together on Fuel Switching. MGE's Initial Brief at p. 10. MGE seemingly fails to recognize that the Home Performance with Energy Star Program is a far different program than the fuel switching program MGE has proposed. MGE has not approached the Companies to work constructively in a joint energy efficiency effort. MGE instead blindsided the Companies by introducing its fuel switching proposal without the courtesy of discussing the idea with the Companies beforehand. The proposed program represents a serious shift in the interactions of our companies, seeking to shape the state energy policy to benefit only MGE. The Companies are extremely troubled that MGE would propose a program forcing action by KCP&L and GMO with little contribution by MGE. MGE is essentially a free rider, in that it benefits with little action required on its part. Under the MGE proposal, the Companies will contribute approximately ***six times*** more funds to the program than MGE. *See*, *e.g.*, MGE's Initial Post-Hearing Brief at 8. Further, MGE would

then benefit from the additional customers and recover its investment in additional mains. The Commission should reject this self-serving proposal.

288. MGE also calls on the Commission to accept its proposal as a means to address barriers to natural gas consumption. MGE suggests that customers are misinformed about the value of natural gas and are, thus, reluctant to switch to natural gas. *Id.* at 6. The Companies suggest that consumers are informed, rational, and are making reasonable market choices. Consumers have access to extensive information on-line, in publications, in bill insert information from MGE and the Companies regarding the respective energy sources. Customers are not ignorant of their options but remain very sensitive to cash flow requirements and exposure to cost fluctuations. MGE's brief assumes that the energy market is comprised of uninformed households who cannot make a reasonable market choice on their own, thus requiring the Commission to make the choice for them. Further, MGE seems to ignore its contribution to these barriers. MGE admits the high cost of conversion represents a primary barrier (*id.*) but seems reluctant to implement a program or modify their own policies and tariffs to incent the switching. KCP&L and GMO believe the customer receives thorough and reasonable information, allowing consumers to make informed decisions. Consumer choice, not a tilted playing field, is the best way to serve the public interest.

289. The reasons that a customer takes natural gas service are varied and numerous. The economics of that decision cannot be addressed simply by implementing a fuel switching proposal. The Commission must also examine all factors that significantly influence customer choice. For example, are the line extension policies of MGE and KCP&L consistent and monetarily equivalent? Do each utility's DSM programs meet the same standards? Do each utility's prices best reflect the costs of service? Will prices of natural gas remain stable in the

future, or will natural gas prices continue to fluctuate widely as past experience suggests? Nowhere in the record is any discussion of MGE's extension policies, builder practices or DSM programs. Prudent decisions require an examination of far more issues than MGE has addressed in this case prior to implementing a fuel switching program.

3. Testimony of Company Witness Gary Goble

290. In its Initial Brief, MGE goes to great lengths to mischaracterize the testimony of Company witness Gary Goble. *Id.* at 9-11. Citing many disconnected and peripheral issues, MGE fails to acknowledge the realities of the issue they created. As noted earlier, the proposed MGE fuel switching program was unknown to the Companies until the time of direct testimony filing. At that point, the Companies were forced to quickly research the topic, identify a rebuttal witness, and prepare a response to the proposal. This is not an easy task to complete within the tight schedule of the proceeding. However, MGE made the effort even more difficult by including proprietary data in the filing, thereby eliminating the ability of an internal company employee to serve as the witness. Despite these challenges, the Companies were able to retain Mr. Goble and prepare a rebuttal case. During cross examination, MGE appropriately asked multiple questions to establish the understanding of the company witness. However, in its brief, MGE chose to misrepresent many of Mr. Goble's responses in an effort to support its proposal.

291. For example, in its brief, MGE states that Mr. Goble clearly had no idea that MGE does not have a volumetric rate. *Id.* at 9. That statement is simply false. Mr. Goble was very familiar with MGE's residential rate and employed it in his analyses. *See* Hearing Exhibit KCP&L-26, Goble Rebuttal Testimony. MGE engages in semantics here. A review of Mr. Goble's Rebuttal Testimony reveals that Mr. Goble is familiar with MGE's rate schedule. In fact, Mr. Goble employed MGE's rate schedule in his determination of the costs and benefits of the proposed fuel switching program. MGE's only correction to Mr. Goble's quantification of

MGE's rate was a statement that the gas adjustment provision would change in the future. Hearing Exhibit KCP&L-2203, Reed Surrebuttal Testimony at p. 27. Nowhere did MGE indicate that Mr. Goble had misapplied MGE's rate. If Mr. Goble had no idea of MGE's rate structure, how was it possible for him to correctly apply the rate? MGE's statement that Mr. Goble had no idea of MGE's rate structure is false and purposely misleading. Mr. Goble's issue with the question was one of terminology. In Mr. Goble's opinion, the largest portion of a customer's natural gas bill from MGE is the gas cost recovery factor which is clearly volumetric in nature. *Id*. While the base rates of MGE employ the fixed-variable methodology, the cost of gas is clearly volumetric. Obviously, the application of a gas cost recovery factor on the basis of MCF sales is a volumetric rate.

292. Although MGE attempts to cast doubts upon Mr. Goble's knowledge of MGE's rates, it is Mr. Goble, not MGE's witness, who correctly calculated the impact of applying those rates upon consumers. MGE's witness failed to rely upon its own rates when calculating the revenue impact of its proposals. *See* Hearing Exhibit KCP&L-2201, Reed Direct Testimony at p. 11-12.[9]

293. In another portion of its brief, MGE challenges Mr. Goble's understanding of the Companies' existing DSM programs. MGE's Initial Post-Hearing Brief at 9. A reading of the record will clearly indicate that Mr. Goble was familiar with the Companies' DSM programs, but that he did not conduct an intensive analysis of these other programs since the issue relating to fuel switching did not and does not relate to the specifics of the input and calculations of the costs and benefits of these other programs. Hearing Tr. at 3043. There is no deficiency in Mr. Goble's testimony. He did not analyze other DSM programs that are not at issue in this

[9] Mr. Reed used average rates calculated from 2009 FERC Form 1 data.

proceeding. He did, however, look over these other programs as a matter of general investigation. *Id.*

294. The MGE brief takes issue with Mr. Goble's testifying about how other Commissions have addressed the adoption of fuel switching initiatives. MGE's Initial Post-Hearing Brief at 10. Again these references are misleading. MGE references its Data Request (DR) No. 7-8 which asks Mr. Goble to identify those state commissions which rejected fuel switching proposals. Hearing Exhibit KCP&L-2206. The referenced response to MGE DR 7-8 provided the results of an informal survey undertaken by Mr. Goble's firm. MGE cites to a discrete part of Mr. Goble's response to make the claim that Mr. Goble is attempting to leave the Commission with an incorrect impression. MGE's Initial Brief at p. 10. However, further review of the response states, in part: "none of the surveyed regulatory commissions have ***mandated*** the imposition of a fuel switching subsidy as proposed by MGE in this proceeding. In most instances, ***a benefit-cost test is required*** to determine whether electric to gas substitution will be required." (Emphasis supplied.) This data request response is consistent with Mr. Goble's responses to various fuel switching initiatives about which MGE questioned Mr. Goble at the evidentiary hearing. MGE proposes a fuel switching program that mandates fuel switching and does not require a benefit-cost test. Mr. Goble's response is clear—that state commissions have not forced utilities to implement fuel switching programs against their will (Hearing Tr. at 3053-54, 3060); it is MGE that is leaving the Commission "with the opposite impression of actual facts." MGE's Initial Brief at p. 10.

295. MGE claims that Mr. Goble did not review all reports referenced in testimony. *Id.* This too is misleading. Mr. Goble read all of Mr. Reed's testimony and analyzed all of Mr. Reeds exhibits. Mr. Goble testified that he did not read and analyze each and every report cited

in each and every of the 123 footnotes contained in Mr. Reed's Direct and Surrebuttal Testimonies, as many reports included voluminous, unrelated material. Hearing Tr. at 3066. To do so was unnecessary to address the issue of MGE's fuel switching proposal. MGE's attempts to avoid the issues of fuel switching through misleading statements should be ignored. Mr. Goble's well-reasoned rebuttal testimony should create serious concerns about the viability of MGE's proposal.

296. Strangely, MGE's brief ascribes motives to Mr. Goble as to why his analyses were not included in his rebuttal testimony and accuses Mr. Goble of attempting to "hide the ball" with regard to his studies. *Id*. at 10-11. The studies were undertaken prior to the filing of testimony, but not included in the testimony since the benefit-cost analyses undertaken by Mr. Goble, like those undertaken by MGE, contained a number of assumptions and input data that simply do not pertain to the Companies, and thus should not be relied upon as the basis for approving MGE's proposal. Mr. Goble's analyses demonstrate that the program will not have a positive payback. Hearing Exhibit KCP&L-26, Goble Rebuttal Testimony at p. 24. Because MGE's studies are fraught with errors, its unsupported and disputed assumptions should be rejected.

297. Both Mr. Reed's Surrebuttal Testimony and MGE's brief demonstrate an appalling lack of knowledge of how to quantify incremental costs. Hearing Exhibit KCP&L-2203, Reed Surrebuttal Testimony at p. 27; MGE's Initial Brief at p. 10. A customer currently receiving electricity already pays an electric customer charge. If that existing electric customer then took natural gas service in addition to the already existing electric service, he/she would not pay an additional electric customer charge. There are no incremental electric customer costs to the customer. In contrast, the electric only customer would not be paying a natural gas customer

charge. However, once the customer received natural gas service pursuant to MGE's proposal, that customer would then start paying the MGE customer charge. Thus, the MGE customer charge is an additional cost that the customer would then experience that would not be experienced in the absence of fuel switching. MGE does not dispute this. Hearing Tr. at 3134. There is no inappropriate comparison made in Mr. Goble's calculations. In fact, it is MGE's significant understatement of costs that causes a severe distortion in its payback analyses. In summary, because the customer to whom MGE's proposal would apply already pay an electric customer charge, the electric customer charge is not an incremental costs. In contrast, that same customer would pay no MGE customer charge until he/she took natural gas service. Senate Bill No. 376, Section 393.1124.2.(6) specifically states that the total resource costs shall be "the sum of all incremental costs of end-use measures that are implemented due to the program..." Hearing Exhibit KCP&L-104. Mr. Goble's calculation uses incremental costs and is in total agreement with this statutory requirement while MGE's proposal fails to accurately identify and calculate the incremental costs that would result from implementing its proposed fuel switching scheme.

4. Conclusion

298. MGE's Initial Brief fails to address the majority of issues raised by KCP&L's rebuttal witness Mr. Goble. MGE's brief fails to address the applicability of data from other states to the Companies' Missouri operations. MGE's brief fails to address the impact of using unrepresentative and/or incorrect information as the basis for making major changes in the balance of the energy supply market. MGE's brief fails to address avenues of rectifying any market imbalances through less intrusive or costly means such as by making changes to rate design, extension policies, DSM programs, or other measures. MGE's brief fails to address the serious environmental issues associated with natural gas extraction. MGE's brief fails to

establish a coherent case for interjecting Commission regulation for customer choice. MGE's brief fails to make a case for acting immediately upon an issue that the Department of Energy has extensively examined and upon which it will make decisions that preempt state regulatory action. MGE's brief fails to make an adequate case for virtually all of the issues raised by Mr. Goble in his rebuttal testimony. Rather than examining the message, MGE's brief attacks the messenger by asking the Commission to rely upon demonstrably incorrect and unsupportable analyses to tilt the competitive energy supply market in favor of natural gas.

299. The fuel switching program recommended by MGE is a natural gas marketing program that benefits only MGE and harms the Companies and their customers. There is not sufficient evidence to implement a fuel switching program. The issue is not ripe insofar as federal regulators are considering the issue and any forthcoming federal regulations will undoubtedly affect Missouri regulation. The Commission should not favor one energy resource over another. The proposal should therefore be rejected.

I. Demand Side Management

300. This section will briefly address comments made by the Missouri Department of Natural Resources ("MDNR") and the Commission Staff related to Demand Side Management ("DSM") issues. As explained in the Companies' Initial Brief at pp. 189-94, the Companies' primary goal related to Demand Side Management ("DSM") programs in this case is to establish a bridge or a temporary framework for going forward on the Companies' DSM programs until the Commission completely implements its rules related to the Missouri Energy Efficiency Investment Act ("MEEIA").

301. MDNR recognized the importance of this goal to establish a temporary framework, and makes constructive comments regarding moving the regulatory process forward until MEEIA is fully implemented:

> In the absence of a cost recovery mechanism proposed by either KCP&L or GMO in their respective case, the Commission should order the Companies to book their DSM program costs in regulatory asset accounts. In addition, the Commission should set an amortization period of 6 years for DSM expenses incurred by the Companies after these rate cases, in conjunction with requiring continuation and consideration of expansion of DSM programs. To apply a 10-year amortization to DSM expenses incurred after the end of the regulatory plan for KCPL and after the test year in GMO' s rate case would be a clear disincentive to KCPL and GMO to invest in demand side programs. A temporary adjustment from 10 years to 6 years amortization for new and ongoing DSM expenses incurred during the "gap period" until MEEIA rules are fully implemented would reduce the disincentive. In addition, it would put the companies' cost recovery opportunities on par with Ameren Missouri's DSM program cost recovery agreed to by the parties and approved by the Commission in Case No. ER-2010-0036 (Bickford Direct Testimony, Ex. GMO 601, p. 10). *See* MDNR Initial Brief at p. 5.

302. The Companies agree that MDNR's proposal in this regard would be appropriate. With the ending of the KCP&L Regulatory Plan in this case, there is no established framework approved for addressing KCP&L's future investments in DSM programs. At this time, the Companies are continuing their DSM programs contained in its tariffs. However, there needs to be a determination from the Commission regarding how the DSM programs will be treated following the conclusion of the KCP&L Regulatory Plan. MDNR's proposal essentially endorses the Companies' recommendation for the treatment of future investment in DSM programs until the MEEIA rules are fully implemented, and the Companies recommend that this proposal be adopted.

303. MDNR also endorsed the continued use of the Customer Program Advisory Group ("CPAG") for addressing DSM-related issues for KCP&L and GMO programs. The Companies also believe the CPAG process should continue through the bridge periods. *See* Hearing Tr. at 3543.

304. While acknowledging the "success and forward momentum created by the implementation of their [the Companies'] DSM programs" (Staff's Initial Brief at p. 119),

Staff fails to endorse any changes in the cost recovery mechanism in this case. Staff instead continues to recommend that "the Commission issue an order directing both KCPL and GMO to comply with the MEEIA goal of achieving all cost-effective demand-side savings by: 1) filing with the Commission written documentation for each DSM program in the EARP and in its last adopted preferred integrated resource plan explaining why continuing or adding the programs as planned does not promote the MEEIA goal of achieving all cost-effective demand-side savings; or 2) continuing to fund and promote, or implement, the DSM programs in the EARP and in its last adopted preferred resource plan." *See* Staff's Initial Brief at p. 121.

305. The Companies believe that they are complying with the requirements of MEEIA as well as the Integrated Resource Planning rule regarding DSM programs. However, the KCP&L Regulatory Plan is expiring with the conclusion of this case. The Commission now needs to establish an improved cost recovery mechanism in this case as a bridge until MEEIA is fully implemented.

306. Staff's position seems to ignore that the current mechanism does not provide timely recovery or earnings opportunities, nor does it sufficiently encourage the implementation of energy efficiency programs by KCP&L and GMO. Therefore, the Staff's proposal to mandate continued DSM investments without modifying the cost recovery mechanism should be rejected by the Commission.

307. Under the existing cost recovery mechanism, KCP&L first funds the DSM programs, and the costs are placed into a regulatory asset for consideration for recovery in the next rate case. Assuming the DSM costs are determined to be recoverable, then those costs are amortized over a ten-year period without the inclusion in rate base. Until the new MEIAA rules are finally implemented, it is important for the KCP&L to have a bridge that

establishes an improved framework for the treatment of its DSM investments until the MEEIA rules can be implemented.

308. The Commission should reject Staff's and MDNR's recommendations to direct the Companies to invest in DSM programs without any assurance that the full costs and lost revenues associated with these programs will be recognized in rates. Instead, the Commission should move forward to implement the cost recovery issue expeditiously, including the recovery of lost revenues associated with the specific DSM programs. *See* Hearing Exhibit KCP&L-55, Rush Rebuttal Testimony at p. 8.

309. The cost recovery mechanism in this case should be consistent with the recent *Order Approving First Stipulation And Agreement* in the AmerenUE rate case, Case No. ER-2010-0036 (March 24, 2010). *See* Hearing Tr. pp. 3531-32. This would change the current amortization period for the DSM regulatory assets from ten (10) years to six (6) years, and include the unamortized balance in rate base for actual expenditures booked to the DSM regulatory asset up through the true-up period of December 31, 2010. The six year amortization period would be applied to DSM program expenditures referred to by Staff as being incurred in "Vintage 4", that is, those subsequent to September 30, 2008. Prior expenditures would continue to be amortized over the originally authorized ten-year period. Additionally, KCP&L would defer the costs of the DSM programs in Account 182 and, beginning with the December 31, 2010 True Up date in this case, calculate allowance for funds used during construction (AFUDC) monthly using the monthly value of the annual AFUDC rate. *See* Hearing Exhibit KCP&L-55, Rush Rebuttal Testimony at pp. 5-6.

310. As explained in the Companies' Initial Brief, it is unnecessary for the Commission to require KCP&L and GMO to make compliance filings with the Commission

regarding MEEIA legislation as proposed by the Staff. *See* Hearing Exhibit KCP&L-56, Rush Surrebuttal Testimony at p. 3.

1. Unrelated Accounting Issues Included in Staff's DSM Analysis

311. In its Initial Brief, Staff confirms that it netted unrelated issues to be included with its adjustment for DSM program costs. *See* Staff's Initial Brief at pp. 125-26. Staff includes negative costs against the unamortized balance of DSM program costs for purposes of computing an annual amortization and return. These negative costs are those that the Commission has previously ordered to be returned to ratepayers over ten years and include excess margins on off-system sales ("OSS") and net reparations from the litigation of Montrose coal freight rates before the Surface Transportation Board ("STB"), but are unrelated to DSM Program costs. Staff admitted that it could have set up and kept track of these unrelated cost items individually, but "this would be cumbersome and inefficient." *Id*. at 125.

312. As discussed in the Rebuttal Testimony of John P. Weisensee, KCP&L and GMO believe this netting to be inappropriate. Mr. Weisensee discusses at length the concerns raised by Staff's specific adjustments and its approach to lump together these unrelated adjustments. *See* Hearing Exhibit KCP&L-64, Weisensee Rebuttal Testimony at pp. 6-18.

313. Staff indicated in its Initial Brief that KCP&L "proposed no reasoning as to why the Staff's accounting results in an inappropriate ratemaking calculation or adjustment in this rate case." *Id.* at 125. In addition to confusing the discussion of the DSM Program costs with a discussion of non-related excess margins on OSS and return of net reparations from the STB, the netting initiated by Staff results in an erroneous computation of Staff's carrying costs on DSM Programs. Staff argues in its Initial Brief that KCP&L is entitled only to carrying costs on its cumulative DSM costs based on a rate not to exceed the AFUDC rate. *Id*. at 124. However, as pointed out in the rebuttal testimony of John P Weisensee, it is not proper to apply this AFUDC

rate to the offsetting amounts for excess margins on OSS or for unamortized STB reparations. As pointed out by Mr. Weisensee on page 12 of his Rebuttal Testimony, the Commission ordered in the 0291 Case that KCP&L pay carrying costs on the cumulative excess margins on OSS at a rate equal to LIBOR plus 32 basis points and that this interest would be included with the excess margins for return to ratepayers over 10 years. Mr. Weisensee also notes on page 16 of his rebuttal testimony that, in the 0089 Case, the Commission ordered that the stipulated net STB reparations would be returned to ratepayers over ten years and that the amount would not be included in rate base. It did not order carrying costs of any kind. By netting the excess margins on OSS and the unamortized STB reparations against the DSM Program costs, Staff is ignoring these provisions from prior orders and is understating the carrying costs it is reflecting for DSM Program costs. This error would be more apparent if Staff did not net these unrelated amounts with DSM Program costs. DSM costs should be considered as a stand-alone cost for purposes of cost recovery. Additionally, Staff should adhere to the provisions of the Orders in the 0291 Case and the 0089 Case as they relate to carrying costs, or lack thereof, on excess OSS margins and STB reparations. *See* Hearing Exhibit KCP&L-64, Weisensee Rebuttal Testimony at pp. 6-18.

314. In its Initial Brief, Staff reflects the annual amortizations that it included in its case for these netted items based on the amounts calculated in its True Up DSM adjustment work paper. Staff states that it included annual amortizations for DSM Vintage 3 and Vintage 4 at $193,663 and $1,810,223, respectively. *Id.* at 126. In addition to understating the carrying costs that it calculated for DSM Programs for these vintages as described above, Staff also misstated the amortization values for these vintages by incorrectly calculating the amount of excess margins on OSS.

315. In its True Up adjustment for DSM, Staff incorrectly calculated excess OSS margins on a calendar year basis rather than using the appropriate periods and the applicable 25th percentile established in the prior orders. The 2009 calendar year included two partial years. The period January through August 2009 was a partial year that continued the period established in the 0291 Case which was effective January 1, 2008. The OSS margins resulting from that stub period did not exceed the ordered 25th percentile in the 0291 Case. Consequently, there were $0 excess margins arising from this 9-month period. The period September 2009 through December 2009 included the first three months of the 12-month period for which the $30 million (total company) 25th percentile ordered in the 0089 Case applied. KCP&L did not experience excess OSS margins for this 12-month period until May 2010. Including reductions described by John P Weisensee in his Rebuttal Testimony (Hearing Exhibit KCP&L-64, Weisensee Rebuttal Testimony at pp. 10-11) and correction of the carrying costs discussed above, Missouri jurisdictional excess margins incurred subsequent to the Stipulation in the 0089 Case totaled $3,148,140. The period September 2010 through December 31, 2010 represented a 4-month stub period. When compared with a pro-ration of the 25th percentile amount for this stub period, there were no excess OSS margins. This pro-rata process was authorized in the 0089 Case (*See* Non-Unanimous Stipulation And Agreement, Case No. ER-2009-0089, p. 8) (April 24, 2009) as discussed by John Weisensee on page 8 and 9 of his Rebuttal Testimony. However, adjustments to the twelve months ended August 2010 of $129,359 were recognized during this stub period. Total excess OSS margins for Vintage 4, the period January 2009 through December 2010, were $3,277,499, excluding interest charges, and $3,324,679 including interest charges. This should have resulted in an amortization over ten years of ($332,468) for excess OSS margins that Staff is using to offset amortization of DSM Program costs. *See* Hearing Exhibit KCP&L-118,

Weisensee True Up Rebuttal Testimony at p. 7. Use of this amount, however, is dependent on removing the improper carrying costs calculated by Staff for excess margins on OSS, and replacing them with the proper recognition of interest costs at LIBOR plus 32 basis points for inclusion in the amount subject to ten-year amortization as discussed above.

J. Low Income Weatherization Program Funding

316. MDNR correctly observed that it may be premature to address the specifics of the Low-Income Weatherization Program Funding issues in this case, but it may be better to be addressed in another forum:

> MDNR supports the recovery in rates of low-income weatherization funds, consistent with ratemaking treatment of such costs for other utilities, to insure continuation of this important program for low-income customers; however, because of a lack of resolution on the details of program administration, it may be better addressed in DSIM filings rather than in these cases.

See MDNR's Initial Brief at p. 7.

317. The Companies believe that this rate case is not the proper forum for a decision to continue the current funding levels for low income weatherization. Therefore, the Companies continue to oppose Staff's and MDNR's proposals to require that KCP&L and GMO maintain the current level of funding for its low-income weatherization programs. From the Companies' perspective, such proposals should be first vetted with the Customer Program Advisory Group ("CPAG") which consists of various interested parties. Perhaps more importantly, a Commission determination of the cost recovery mechanism for such programs should be made before a decision on the level of weatherization funding is made.

318. As the Companies explained in their Initial Brief at pp. 195-96, it would be unlawful for the Commission to mandate a specific funding level for low income weatherization without a mechanism in place for the Companies to recover these mandated-expenditures.

319. Notwithstanding the concerns stated herein, the Companies are willing to adopt the following MDNR's proposals in this case:

> The Commission should . . . 2) permit the companies to continue working with local community action agencies for the time being, and 3) instruct the companies to evaluate transition of the low income weatherization funds to the EIERA and administration of the programs to DNR and present that evaluation to the CPAG for consideration.

320. This proposal is a constructive suggestion for continuing to evaluate the best methods of achieving the goals of the Companies' low-income weatherization programs.

IV. CONCLUSION

321. For all the reasons expressed in the Companies Initial Brief and this Reply Brief, and based upon the substantial and competent evidence in the record, KCP&L and GMO recommends that the Commission adopt the Companies' positions with respect to all of the prudence and non-prudence issues.

Respectfully submitted,

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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 18th day of March, 2011, to all counsel of record.

/s/ James M. Fischer
James M. Fischer