BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light	)	
Company's Request for Authority to Implement	)	File No. ER-2016-0285
A General Rate Increase for Electric Service	)	

KANSAS CITY POWER & LIGHT COMPANY'S
APPLICATION FOR REHEARING AND MOTION FOR CLARIFICATION

Kansas City Power & Light Company ("KCP&L" or "Company"), pursuant to Section 386.500[1] and 4 CSR 240-2.160, files its application for rehearing and/or reconsideration of the *Report and Order* ("*Report and Order*") issued on May 3, 2016. In support of its application for rehearing and motion for clarification, the Company states as follows:

I. Legal Principles That Govern Applications for Rehearing.

1. All decisions of the Commission must be lawful, with statutory authority to support its actions, as well as reasonable. State ex rel. Ag Processing, Inc. v. PSC, 120 S.W.3d 732, 734-35 (Mo. en banc 2003). An order's reasonableness depends on whether it is supported by substantial and competent evidence on the record as a whole. State ex rel. Alma Tel. Co. v. PSC, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001). An order must be neither arbitrary, capricious, nor unreasonable, and the Commission must not abuse its discretion. Id.

2. In a contested case, the Commission is required to make findings of fact and conclusions of law pursuant to Section 536.090. Deaconess Manor v. PSC, 994 S.W.2d 602, 612 (Mo. App. W.D. 1999). For judicial review to have any meaning, it is a minimum requirement that the evidence, along with the explanation thereof by the Commission, make sense to the reviewing court. State ex rel. Capital Cities Water Co. v. PSC, 850 S.W.2d 903, 914 (Mo. App. W.D. 1993). In order for a Commission decision to be lawful, the

[1] All references to the Missouri Revised Statutes (2000), as amended.

Commission must include appropriate findings of fact and conclusions of law that are sufficient to permit a reviewing court to determine if it is based upon competent and substantial evidence. State ex rel. Noranda Aluminum, Inc. v. PSC, 24 S.W.3d 243, 246 (Mo. App. W.D. 2000); State ex rel. Monsanto Co. v. PSC, 716 S.W.2d 791, 795 (Mo. en banc 1986); State ex rel. A.P. Green Refractories v. PSC, 752 S.W.2d 835, 838 (Mo. App. W.D. 1988); State ex rel. Fischer v. PSC, 645 S.W.2d 39, 42-43 (Mo. App. W.D. 1982), cert. denied, 464 U.S. 819 (1983).

3. In State ex rel. GS Technologies Operating Co. v. PSC, 116 S.W.3d 680, 691-92 (Mo. App. W.D. 2003), the Court of Appeals described the requirements for adequate findings of fact when it stated:

> While the Commission does not need to address all of the evidence presented, the reviewing court must not be "left 'to speculate as to what part of the evidence the court found true or was rejected.'" … In particular, the findings of fact must be sufficiently specific to perform the following functions:
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> > [F]indings of fact must constitute a factual resolution of the matters in contest before the commission; must advise the parties and the circuit court of the factual basis upon which the commission reached its conclusion and order; must provide a basis for the circuit court to perform its limited function in reviewing administrative agency decisions; [and] must show how the controlling issues have been decided[.]
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> [St. Louis County v. State Tax Comm'n, 515 S.W.2d 446, 448 (Mo. 1974), citing Iron County v. State Tax Comm'n, 480 S.W.2d 65 (Mo. 1972)].

4. The Commission cannot simply recite facts on which it bases a "conclusory finding," and must rather "fulfill its duty of crafting findings of fact which set out the basic facts from which it reached its ultimate conclusion" in a contested case. Noranda, 24 S.W.3d at 246. "Findings of fact that are completely conclusory, providing no insights into how controlling issues were resolved are inadequate." Monsanto, 716 S.W.2d at 795.

5. A review of the evidentiary record in this case demonstrates that the *Report and Order* fails to comply with these principles in certain respects and that rehearing should be granted as to the issues discussed below.

II. Issues on Which Rehearing Should be Granted.

A. The Report and Order is Unlawful and Unreasonable in that the Revenues Adopted By The Commission Do Not Include an Adjustment to Annualize kWh sales in this rate case as a result of KCP&L's Missouri Energy Efficiency Investment Act ("MEEIA") Cycle 1 demand-side programs.

1. Proper Ratemaking Requires The Billing Determinants To Be An Accurate Reflection of the Expected Usage in the Year Following The Conclusion of the Rate Case.

6. In its *Report and Order*, the Commission concluded that KCP&L should not be allowed to make an adjustment to annualize kWh sales in this rate case as a result of KCP&L's MEEIA Cycle 1 demand-side Programs. The Commission's decision is unlawful and unreasonable since there is no competent and substantial evidence to support the Commission's decision. The findings of fact related to this issue are conclusory and do not advise the parties nor a reviewing court of the factual basis upon which the Commission reached its conclusion and order; does not provide a basis for the court to perform its limited function in reviewing administrative agency decisions; and does not show how the controlling issues have been decided.

7. The Commission has also incorrectly concluded that "the language 'all active MEEIA programs' in the Cycle 2 Stipulation does not express or create an opportunity for KCPL to annualize kWh sales from its Cycle 1 demand-side programs." (R&O, p. 42) Again, there is no competent and substantial evidence in the whole record to support this conclusion.

8. The Commission has confused the recovery of MEEIA-related costs (i.e. program costs, throughput disincentive, and earnings opportunity) with a proper annualization

of energy and demand savings from all active MEEIA programs in the test year and true-up update period to ensure the billing determinants in this case are accurate and will produce the revenues authorized in this case on a going forward basis.

9. The Commission has misunderstood the ratemaking need for KCP&L's proposed annualization adjustment. This adjustment is not designed to recover the throughput disincentive related to the MEEIA Cycle 1 programs at all. The granting of KCP&L's request for an annualization adjustment would not "result in double recovery of assumed lost revenues." (R&O, p. 40) The recovery of the throughput disincentive is not the same as determining the appropriate billing determinants for establishing new rates in this case.

10. This issue involves ensuring that the billing determinants are correct and produce the revenues to meet the Company's authorized revenue requirement (Tr. 1661). As Chairman Hall accurately observed in the hearing (Tr. 1707), KCP&L is not trying to recover its MEEIA-related costs through the proposed revenue annualization adjustment. Instead, KCP&L is attempting to develop accurate billing determinants for establishing rates to ensure that the expected revenues will be produced from the new rates.

11. The Company made an adjustment in its direct filing in this case to reflect the energy efficiency (e.g. MEEIA Cycle 1 and 2 programs) impact on normalized and annualized sales. The Staff has made an annualization adjustment for Cycle 2 energy savings (Tr. 1651), but Staff has not made a similar adjustment in this case to reflect the impact of the MEEIA Cycle 1 programs. (Ex No. 143, Rush Rebuttal, p. 12).

12. As a result, the Commission is overstating the number of KWHs and KWs in the billing determinants in setting rates in this case (Tr. 1704, 1710-11). Staff witness John Rogers, upon questioning by Chairman Hall, confirmed that the Company billing sales will be overstated

under Staff's proposed annualization. (Tr. 1710-1713) As a result, KCP&L will not recover its authorized revenue requirement since the billing determinants are understated. The result is a loss of $6.6 million each and every year until the Company files and implements another rate case. (Ex. 143, Rush Rebuttal, TMR-7) This decision is not based upon competent and substantial evidence, and it is arbitrary, capricious, and an abuse of discretion.

2. The Non-Unanimous Stipulation and Agreement In Case No. EO-2015-0240 ("MEEIA Cycle 2 Stipulation") Requires A Revenue Annualization of All Active MEEIA Programs, Including Both Cycle 1 and Cycle 2 Programs, As A Matter of Contract Interpretation.

13. The Commission has also incorrectly concluded that "Unlike the MEEIA Cycle 1 DSIM that relied upon the throughput disincentive feature of the DSIM for recovery of lost revenues, the MEEIA Cycle 2 Stipulation contemplated that lost revenues would be recovered through a revenue annualization in subsequent KCPL rate cases." (R&O, p. 39). There is no competent and substantial evidence to support this conclusion, and the findings of fact are not sufficient to inform the court how this issue was resolved. The Commission's conclusion is based upon an incorrect interpretation of the stipulations in Case Nos. EO-2015-0240, EO-2014-0095 and two related KCP&L tariffs which defined the annualization process in detail.

14. In reaching its improper interpretation of the Cycle 2 Stipulation, the Commission relied upon the fact that the "language 'all active MEEIA programs' occurs four (4) times in the Cycle 2 Stipulation." (R&O, p. 40). However, the fact that the term "all active MEEIA programs" appears four times in the Annualization paragraph does nothing to indicate that "all active MEEIA programs" does not include all active MEEIA programs including those in Cycle 1.

15. Next, the Commission relies upon Paragraph 10 a.(ii) of the Cycle 2 Stipulation that specifies that the various steps to annualize kWh sales for 'all active MEEIA programs" is

the methodology in KCPL's Tariff Sheets 49K and 49L. According to the Commission's findings, "Those sheets refer only to 'programs', 'all programs' or 'Cycle 2 programs'. Those sheets do not use phrases such as 'all active programs,' 'all active MEEIA programs' or 'Cycle 1 programs.'" (R&O, p. 40). This finding mirrors the arguments of Staff witness John Rogers. (Ex. No. 225, Rogers Surrebuttal, pp. 2-11) Mr. Rogers pointed to Tariff Sheets 49K and 49L and noted that these tariff sheets refer to "programs", "all programs" or "Cycle 2 programs" and does not use the phrase "all active programs," "all active MEEIA programs" or "Cycle 1 programs." This fact does not in any way limit the term "all active MEEIA programs" in Paragraph 10 of the Cycle 2 Stipulation to mean only "all active MEEIA Cycle 2 programs."

16. Thirdly, the Commission finds that "KCPL's Tariff Sheet 49L explicitly defines 'Programs' as Cycle 2 programs and does not include Cycle programs." (R&O, p. 40) However, this tariff sheet does not define all active MEEIA programs in Paragraph 10 to mean only the MEEIA Cycle 2 programs. It only identifies what programs are considered MEEIA Cycle 2 Programs. Tariff Sheet 49L is not support for the Commission's findings.

17. Fourth, the Commission finds that "KCPL Tariff Sheet 1.04C includes only KCPL's MEEIA Cycle 2 demand-side programs." (R&O, p. 40) However, this tariff does not in any way indicate that the term "all active MEEIA programs" in Paragraph 10 of the Cycle 2 Stipulation means that the annualization required by the paragraph is applicable to only Cycle 2 MEEIA programs.

18. Finally, the Commission concluded that "The tariff sheets control over any ambiguity in the Cycle 2 Stipulation because the parties agreed that the tariffs would control over such an ambiguity." (R&O, p. 41) Notwithstanding this statement, the tariff sheets do not

mandate that only Cycle 2 active programs should be included in the annualization adjustment required by the Cycle 2 Stipulation. The Commission should reconsider and rehear this issue.

B. The *Report and Order* is Unlawful and Unreasonable in that It Adopted the Division of Energy's Proposal to Implement An Inclining Block Rate ("IBR") Structure Without Competent and Substantial Evidence to Support The Decision.

19. In its *Report and Order*, the Commission adopted the DE's proposal to move toward flattened residential rates in the winter and IBR in the summer without competent and substantial evidence to support the decision. Further, the Commission's decision is arbitrary, capricious, and an abuse of discretion.

20. Although the Commission has wide discretion in determining just and reasonable rates, its discretion is not without bounds. "The reasonableness of the PSC's order depends on whether it was supported by competent and substantial evidence upon the whole record; whether it was arbitrary, capricious, or unreasonable; or whether the PSC abused its discretion." State ex rel. Inter-City Beverage Co. v. PSC, 972 S.W.2d 397, 401 (Mo. App. W.D. 1998).

21. As explained in KCP&L's Initial Brief at 62-68, there are numerous rate design studies underway that will address the residential rate structures, including IBR rates, and time-of-use rates, and the Company believes that it is inappropriate to make such significant policy decisions and changes in its rate design before those studies are completed and the customer impacts are fully considered. In ER-2016-0156, GMO was ordered to evaluate rate designs that might encourage efficient use. This study will inform potential changes for KCP&L. (Ex. 138, Miller Surrebuttal, p. 10) The Commission's findings of fact do not explain the reasons it is reasonable and prudent to adopt DE's proposed rate design before the rate design studies are completed. As a result, the Commission has acted arbitrarily, capriciously and abused its discretion.

22. The Company's current rate structure has been developed and improved over many years, after numerous rate design cases and general rate cases. The Commission should not adopt a new rate design policy based upon unsupported assertions that the new rate structure will improve efficiency or force consumers to conserve electricity. Rather the Commission should strive to adopt cost-based rate structures that will recover fixed costs through fixed charges, such as customer charges, demand charges or in the early energy blocks of the rate structure, and establish tail block rates to recover incremental fuel and variable costs.

23. The Commission's Report and Order does not take into account the impact that IBR will have on both the Company's revenues and customer bills and therefore the Commission has acted arbitrarily, capriciously and abused its discretion. Staff performed an analysis on the average use per customer under the IBR structure. Staff concluded that the overall revenue stability for the customer as well as customer impacts will be a significant issue if IBR is adopted. (Ex. 138, Miller Surrebuttal, p. 9). Given the current billed usage data in the test year and the number of residential customers whose energy usage falls at or below the first energy block, moving costs, particularly non-energy costs, to the second and third block will result in a greater level of volatility in both revenue recovery and customer bill impact due to weather. (Id. p. 9)

24. For these reasons, the Company would urge the Commission to reconsider and/or rehear its decision on this issue, and not depart from KCP&L's existing and time-tested rate structure without a thorough study of the impacts of new rate structures on KCP&L and its customers.

C. The *Report and Order* is Unlawful and Unreasonable in that It Failed to Recognize and Include in Depreciation Rates the Cost of Retirement of Power Plants.

25. In its *Report And Order*, the Commission rejected KCP&L's proposal to include the cost of retirement in the Company's depreciation rates. (R&O, p. 38) This decision is unreasonable in that it is not supported by competent and substantial evidence, is an abuse of discretion, and will unreasonably result in intergenerational inequity since customers that receive the benefit of the power plants will not be the customers who pay for the power plants' retirement costs.

26. As explained in KCP&L's Initial Brief at 36, the policy issue to be determined by the Commission in this case is whether current customers who receive the benefit of using the Company's power plants should pay for the cost of retiring those plants while they are being used, or whether those retirement costs should be pushed off on future generations who did not receive benefits from the power plants. KCP&L believes the answer is clear that current customers who receive the power from the power plants should pay for retirement costs in their current depreciation rates. The Commission's *Report And Order* however arbitrarily and capriciously rejects this position.

27. The Commission's rationale for its decision is found in page 37 of its *Report And Order* where it states: "Terminal net salvage should not be included in depreciation rates because the actual cost KCPL will incur is unknown, cannot be measured, and is speculative." This decision ignores or disregards the fact that almost all of the major inputs into depreciation rates involve estimates, including estimated lives of the electric plants. Informed judgment and estimates of the lives of power plants and salvage value are the foundation of what depreciation experts use to develop depreciation rates. Estimated life of the plant and its salvage value are

predictors of the actual life of the plant and salvage value. Yet, the use of estimated lives of power plants and estimated salvage value has not resulted in a public policy of refusing to recognize that power plants are being depreciated over time and need to be paid for by current customers.

28. As Mr. Spanos explained and Staff witness Patterson confirmed, all depreciation studies are based upon estimates and estimated lives of the plants (Tr. 356-57). Mr. Spanos also made the point that retirement costs are less speculative today than dismantlement costs since "many, many, many units have been retired since 2005. . . Today we know that generating facilities are being retired; we know that there are many more planned to be retired in the next five years. . . So because of the fact that you have these retirements and expectations for them to retire, they're no longer speculative." (Tr. 326). The Commission's decision improperly and unlawfully ignores this competent and substantial evidence.

29. Perhaps more importantly, the Commission's decision ignores the fact that the Commission's own rules require that the retirement estimates, as well as other inputs into depreciation studies, must be periodically reviewed and updated—at least every five (5) years. See 4 CSR 240-3.175(1)(B) (Tr. 330). As a result of these periodic depreciation study filings, the estimated retirement costs as well as the other components of the depreciation study, will be updated periodically as time goes by. The Commission should not be concerned that retirement costs are estimated or not known to the exact dollar. The fact that informed professional judgment is used to develop all depreciation rates, based upon rigorous studies, is no reason to saddle future generations of customers with the costs of retiring power plants that are being used for the benefit of today's customers, or conclude that these costs are unknown, cannot be measured, and are speculative.

30. While noting that the Commission has previously excluded terminal net salvage from rates,[2] (R&O, p. 37) the Commission's decision fails to recognize that the primary assumption underlying the Commission's previous decision in the *Empire* case (i.e. power plants are "rarely" retired) is no longer correct. The undisputed and uncontroverted competent and substantial evidence clearly shows that power plants are frequently retired in Missouri and across the country. (Ex. No. 146, Spanos, pp. 9-14; Tr. 325, 346). It is simply not true that power plants are only "rarely" retired. In their briefs, Staff and Public Counsel did not dispute that the underlying assumption of the *Empire* decision is no longer true in today's world of routine retirements of older, coal-fired power plants. (Staff Brief at 50-51; Public Counsel Brief at 31-35) However, the Commission's decision ignores the changing world related to power plant retirements and instead suggests that "Nothing has changed in the interim and there is no good reason to admit costs for terminal net salvage to rates now." (R&O, p. 37). This finding is not adequate to explain the reason the Commission rejected the Company's depreciation rates.

31. Given the circumstances today with regard to plant retirements, the *Empire* decision for terminal net salvage is no longer applicable and should not apply to KCP&L's instant case. The Commission should not maintain its previous practice when the underlying premise for the past practice is gone.

32. Instead of denying that there is generational inequity in the current system of leaving retirement costs to be fully recovered until many years after the power plants are retired, the Commission concluded "As with any speculative cost, if the amount accrued for retirement during the plant's operation in fact exceeds the actual cost of that retirement, there will be no

[2] See *Report And Order*, Re Empire District Electric Company, Case No. ER-2004-0570, p. 53 (March 10, 2005)(hereinafter "*Empire* case").

feasible way to return that money to the ratepayers that paid too much." (R&O, p. 37) Again, this ignores the periodic depreciation studies that are required by the Commission. Such depreciation studies serve the purpose of adjusting depreciation rates so that only the total amount of plant investment and subsequent retirement costs net of salvage are recovered from customers. Such periodic depreciation studies ensure that the Company won't be over-recovering such retirement costs. Such unfounded fears should not keep the Commission from joining the vast majority of state public service commissions in recognizing that current customers should pay for the full cost of their electric service.

33. As explained in KCP&L's Initial Brief at 36-47, the terminal net salvage costs included in KCP&L's proposed depreciation rates are extremely conservative since they do not include the cost of dismantling the power plants. The terminal net salvage used for KCP&L's depreciation study, however, are based only on the retirement components of the Sega report, and do not include other costs for site remediation or dismantlement that may potentially occur. In other words, the depreciation rates that KCP&L is proposing in this case include the cost of shutting the doors to the power plants upon retirement and ensuring the safety of the site, but not the full cost of dismantling the power plants. According to the Sega report, the retirement costs represent less than one-half of the total terminal net salvage expected for the power plants if dismantlement costs are considered. (Ex No. 140, Rogers Direct, Schedule CRR-2, page 1-7).

34. In this motion, KCP&L is requesting that the Commission reconsider and/or rehear its decision on this issue, and join the overwhelming majority of states that include a portion of the terminal net salvage costs (i.e. retirement costs of power plants) in the depreciation rates so that current customers that receive the benefit of the energy and power from those plants will pay those retirement costs through depreciation expense as the power plants are used. In the

past, the Commission has not included the retirement costs in depreciation rates since there were few, if any, power plants that were being retired. However, the uncontroverted evidence in this proceeding demonstrates that such retirements of power plants are occurring in Missouri and elsewhere, and are expected to continue in the future (Ex. No. 146, Spanos Rebuttal, pp. 9-14; Tr. 325, 346).

35. The Commission's decision fails to adequately consider the fact that circumstances have changed since the *Empire* decision. Since the Commission last considered this issue in the *Empire* case in 2005, the Commission has changed its overall approach to depreciation rates for power plants. In its *Report And Order* in Re Union Electric Company, ER-2010-0036, p. 30 (May 28, 2010), the Commission decided to adopt the "life span" method for depreciation rates rather than the previously used "mass asset accounting" method. This change of depreciation policy to adopt the life span method also suggests that it is now appropriate to include terminal net salvage in the Company's depreciation rates. Previously, under the mass asset accounting method, such retirement costs were reflected in depreciation rates (Tr. 372-74). However, under the life span method, the retirement costs should be explicitly recognized and included in depreciation rates.

36. If the Commission reconsidered its decision and included the cost of retirements in the current depreciation rates, the Commission would ensure that the current generation of customers that receive the benefit of the power plants will also have the retirement costs of those power plants (not including the dismantlement costs) reflected in their electric rates. Otherwise, these retirement costs will be left for future generations to pay, even though future customers may not have received any benefit from the retired power plants.

37. For all of the foregoing reasons, the Commission should reconsider and/or rehear its decision and adopt KCP&L's position that the retirement cost component of terminal net salvage should be reflected in KCP&L's depreciation rates in this case. It is fair and equitable for customers who receive the benefit of the Company's power plants to pay the cost of retiring those power plants (but not including the dismantlement costs) as they are being used. Otherwise, future generations of KCP&L's customers will be required to pay for the retirement costs of the power plants, even though they will not receive the benefit of those retired plants.

D. The Report and Order is Unlawful and Unreasonable in that the Commission's Decision Related to Electric Vehicle Charging Stations ("EVCS") Is Contrary To Missouri Law and Will Result In The Stifling of the Development of the EVCS Marketplace.

38. The *Report and Order* is unlawful and unreasonable because the Commission has misinterpreted its own jurisdiction to regulate the provision of EVCS in Missouri. (R&O, pp. 45-47). In particular, the Commission erred when it found that "EV charging stations are not 'electric plant' as defined in the statute because they are not used for furnishing electricity to light, heat, or power." (R&O, p. 45). The Commission erred as a matter of law when it concluded: "The Commission has determined that it lacks statutory authority over the proposed EV charging stations because they are not used for furnishing electricity for light, heat, or power." (R&O, pp. 46-47)

The Commission has jurisdiction to regulate utility-owned and operated electric vehicle charging stations operated in a utility's service area. Section 386.020(43) RSMo. defines a "public utility" as any "electrical corporation" "owning, operating or controlling or managing any electric plant. . ."[3] KCP&L and GMO are both "electrical corporation[s],"[4] owning,

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

operating, controlling and managing the electric vehicle charging stations. Contrary to the conclusion of the Commission, the electric vehicle charging stations are "electric plant" under Section 386.020(14) which facilitates the distribution, sale or furnishing of electricity for power to electric vehicles.[5]

The Commission's decision that "The battery is the sole source of power to make the vehicle's wheels turn, the heater and air conditioner operate, and the headlights shine light" is not based upon competent and substantial evidence, and ignores the fact that KCP&L's EV charging station facilities are necessary to connect to the EV's battery. It is electricity that is being sold and not a charging service as concluded by the Commission. (R&O, p. 45).

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

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

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

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

39. The Commission should reconsider its decision and conclude that KCP&L is providing electrical service through the electric vehicle charging stations as a public utility. The service will be available to any electrical vehicle driver that wishes to avail themselves of the electric service. Without the EVCS, the Company would not be providing an essential service available to its mobile customer who wants the ability to charge their electric vehicles across the entirety of the Company's service area (Ex. 144, Rush Surrebuttal, p. 15). The Commission should conclude that the electric vehicle charging stations are part of the public utility's regulated local distribution network which is necessary to provide electricity to the electric vehicles. As such, KCP&L's EV charging station facilities should be treated as "electric plant" needed to provide electric service through electric vehicle charging stations to electric vehicle drivers as a public utility service.

40. The Commission also has misinterpreted its statutory authority to regulate public utility services that may compete with unregulated services. (R&O, pp. 45-46) For years, the Commission has regulated telecommunications services at the same time that there have been unregulated telecommunications services in the same marketplace.

41. As explained by the Dissenting Opinion of Commissioner Scott T. Rupp in Case No. ET-2016-0264 (filed April 27, 2017), the Commission's decision to treat EVCS as unregulated services "will stifle the development of the EV market in Missouri and consequently the EVCS market as well." The competent and substantial evidence in this proceeding supports Commissioner Rupp's position in Case No. ET-2016-0264. (Ex No. 144, Rush Surrebuttal, pp. 14-16).

42. For these reasons, the Commission should reconsider and/or rehear its decision to treat EV charging stations as an unregulated service.

MOTION FOR CLARIFICATION

43. Paragraph 17 of the Report and Order states that for optional Residential Time-of-Use ("TOU") rates (hourly) and Time-of-Day ("TOD") rates, KCP&L and Staff are working to design a program as follows:

- Identify a number of premises served on a given distribution circuit, preferably one that is experiencing load growth from existing premises, as opposed to one experiencing load growth due to additions of additional premises taking service;

- Install double-read meters consistent with a pre-determined program budget;

- Customers in the study area would continue to be billed on the applicable rate using a manual billing process, but a peak time rebate would be developed and credited against bills. Specific times for the rebate would depend on the load characteristics of the studied circuit, but late afternoon and early evening hours during the summer would be anticipated to be the applicable time period. This also coincides with above-average market prices for energy, and the time of day and year typically associated with RTO capacity requirements;

- Study whether the application of a peak time rebate had an impact on delaying the need for distribution system upgrades. The needs of adequately serving the impacted customers would come before the prioritization of this study, such that any necessary upgrades would be made and not unreasonably delayed.[6]

44. As discussed on pp. 15-17 of the Rebuttal testimony of Marisol Miller (Ex. 137), multiple studies are underway within the KCP&L and GMO companies to explore dynamic rates. As these studies have not been completed, it is unclear if TOU rates are the best means to address peak load issues. In ER-2014-0370 the Commission ordered KCP&L to complete a study regarding the redesign of its TOU rates within two years of the effective date of that order,

[6] Ex. 203, p 8.

making the study due September 15, 2017. Similarly, in ER-2016-0156, the Commission ordered GMO to study TOU rates for GMO including time-of-use residential and SGS rates, critical peak rates, Electric Vehicle TOU rates for stand-alone charging stations, TOU rates applicable to Electric Vehicle charging associated with an existing account, Real Time Pricing, Peak Time Rebates, and other rate types which could encourage load shifting/efficiency. GMO will propose rates based on this study no later than its next rate case or rate design case. These studies will provide more understanding of the role of dynamic rates and help determine an appropriate path forward for these rates. Other work is being done within the Integrated Resource Planning process to examine demand side rates.

45. KCP&L believes that the studies referenced above will give it the information needed to make an informed decision on TOU and TOD rates. KCP&L wants to make it clear to the Commission that, while the Company and Staff have had one telephone meeting to discuss these issues, the Company is not currently designing a program with Staff as set forth in paragraph 17 of the Report and Order. The TOU and TOD programs are still being evaluated under the studies mentioned above and design work has not begun.

III. Conclusion.

WHEREFORE, Kansas City Power & Light Company respectfully requests that the Commission grant rehearing of its *Report and Order* and grant its Motion for Clarification, as more fully described herein.

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 12th day of May, 2016, to all parties of record.

/s/ Robert J. Hack

Robert J. Hack