

*Exhibit No.:*

*Issues: Acquisition Transition Costs,  
Continuation of Construction  
Accounting, DOE Nuclear Waste Fund  
Fees, Bad Debt Expense, A&G Expense,  
Rate Case Expense, ADIT, Wolf Creek  
OPEBs, Electric Vehicle Chargers*

*Witness: Keith Majors*

*Sponsoring Party: MoPSC Staff*

*Type of Exhibit: Surrebuttal Testimony*

*Case No.: ER-2014-0370*

*Date Testimony Prepared: June 5, 2015*

**MISSOURI PUBLIC SERVICE COMMISSION**

**REGULATORY REVIEW DIVISION**

**UTILITY SERVICES - AUDITING**

**SURREBUTTAL TESTIMONY**

**OF**

**KEITH MAJORS**

**KANSAS CITY POWER & LIGHT COMPANY**

**CASE NO. ER-2014-0370**

*Jefferson City, Missouri  
June 2015*

**\*\* Denotes Highly Confidential Information \*\***

**NP**

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OF  
KEITH MAJORS  
KANSAS CITY POWER & LIGHT COMPANY  
CASE NO. ER-2014-0370**

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Surrebuttal Testimony of  
Keith Majors

1 A. I will be providing surrebuttal testimony regarding the following topics:

- 2 • Recovery of transition costs related to the Aquila acquisition completed in  
3 2008;
- 4 • Continuation of Construction Accounting for the La Cygne environmental  
5 retrofit project;
- 6 • Department of Energy (“DOE”) nuclear waste fund fees;
- 7 • Bad Debt Expense, specifically the bad debt “factor up”;
- 8 • Administrative and General (“A&G”) expenses;
- 9 • Rate Case Expense;
- 10 • ADIT related to CWIP;
- 11 • Wolf Creek OPEB expense; and,
- 12 • Electric vehicle charging stations installed in the Clean Charge Network.

13 **ACQUISITION TRANSITION COSTS**

14 Q. What is KCPL’s position regarding the amortization of acquisition transition  
15 costs?

16 A. KCPL has requested \$3.8 million (Missouri jurisdictional amount) of  
17 amortized transition costs in this case. KCPL requests the Commission to include in KCPL’s  
18 cost of service the KCPL portion of the annual amount of the amortization of acquisition  
19 transition costs, but without using any support from the Synergy Savings Tracking Model  
20 (“Tracking Model”). The Commission previously ordered in Case No. EM-2007-0374  
21 (“Acquisition Case”, or “Merger Case”) that synergy savings should be tracked using  
22 the Synergy Savings Tracking Model. According to the Report and Order in that case,  
23 savings must exceed the annual amortization amount of the transition costs before amortized  
24 transition costs may be recovered from KCPL and KCP&L Greater Missouri Operations

1 (“GMO”) ratepayers. KCPL witness Ives discusses transition cost recovery on pages 51-65 of  
2 his rebuttal testimony.

3 In Case No. ER-2010-0355 (“2010 Rate Case”) the Commission authorized including  
4 in cost of service the annual amount of a 5-year amortization of the acquisition transition costs  
5 related to Great Plains Energy’s (“GPE”) 2008 acquisition of Aquila. Staff recommends that  
6 the Commission end this inclusion in KCPL’s cost of service. The nature of these transition  
7 costs, as well as Staff’s recommendation as to their recovery, is discussed in detail on  
8 pages 229-242 of Staff’s Cost of Service Report Filed April 3, 2015.

9 Q. On page 51 of his rebuttal testimony, Mr. Ives refers to a “synergy tracker  
10 model”. Describe this model?

11 A. Witness Ives is referring to the tracking system that, in the Acquisition Case,  
12 the Commission ordered the companies to use to track the merger synergy savings.  
13 It compares a baseline calendar year 2006 Non-Fuel Operations and Maintenance (“NFOM”)  
14 expense to calendar year adjusted 2009 expenses in the 2010 Rate Case. Staff’s interpretation  
15 of the Commission’s Report and Order in the Acquisition Case is that this model is to be  
16 prepared and presented in succeeding rate cases if amortized transition costs are requested for  
17 recovery.

18 Q. Do you know what the Commission said when it ordered KCPL and GMO to  
19 use this Tracking Model?

20 A. In its Report and Order in the Acquisition Case, the Commission both  
21 identified the model and ordered its use by the following:

22 245. If the Commission requires synergy tracking, the  
23 Applicants suggest a simple approach, noting that  
24 additional complexity does not improve accuracy. The  
25 Applicants suggest establishing base period costs and

1 then comparing each subsequent year's actual costs to  
2 the base year costs, as adjusted for inflation. The net  
3 decrease in expense would be considered synergy  
4 savings.  
5 (footnote omitted)

6 \* \* \* \*

7 247. Applicants recommend 2006 as the base year for  
8 synergy savings tracking because that year represents  
9 the last full year of operations unaffected by the merger.  
10 It is also the test period for Aquila's most recent rate  
11 case, Case No. ER-2007-0004, and the test period of  
12 KCPL's most recent rate case, Case No. ER-2007-0291.  
13 Consequently, the base year of 2006 provides a good  
14 test period for both Aquila and KCPL to evaluate  
15 synergy savings to be accomplished as a result of the  
16 merger. (footnote omitted)

17 \* \* \* \*

18 **IT IS ORDERED THAT:**

19 \* \* \* \*

20 6. Authorization of the transactions described in  
21 Ordered Paragraphs Number One through Five are  
22 subject to the following conditions:

23 \* \* \* \*

24 c. Great Plains Energy, Incorporated, Kansas City  
25 Power & Light Company, and Aquila, Inc., shall, upon  
26 closure of the authorized transactions, implement a  
27 synergy savings tracking mechanism as described by the  
28 Applicants, and in the body of this order, utilizing a base  
29 year of 2006;

30 Q. Before this case did KCPL track merger synergy savings as the Commission  
31 ordered it to?

32 A. Yes. In KCPL's 2009 Rate Case, Mr. Ives explained in rebuttal testimony:

33 [A]s a result of the acquisition occurring on July 14,  
34 2008, the Company determined that synergy savings  
35 would have to be tracked differently for 2008 than in

1 2009 and beyond. Essentially, a **two-phase approach is**  
2 **required to track synergy savings.**

3 (Ives Rebuttal, page 7, lines 6-9, Case No. ER-2009-  
4 0089) (emphasis added)

5 \* \* \* \*

6 **Q. Please describe what you mean by the Phase 2**  
7 **synergy savings tracking mechanism the Company**  
8 **will utilize for 2009 and beyond?**

9 A. Our steady state approach to synergy savings  
10 tracking is to have an Excel-based model that tracks  
11 synergy savings as identified and realized on a  
12 “combined company” basis. **The tracker looks at non-**  
13 **fuel operations and maintenance (“NFOM”) FERC**  
14 **accounts – the same basis utilized to calculate the**  
15 **\$305 million in synergy savings over the first five**  
16 **years after acquisition described by the Applicants in**  
17 **Case No. EM-2007-0374. The tracker compares**  
18 **actual results to the 2006 base year, adjusted for**  
19 **known and measurable changes, including inflation.**  
20 As I mentioned, as a result of the mid-year, mid-month  
21 close of the acquisition (July 14, 2008), we determined  
22 that a calendar-year based tracking mechanism utilizing  
23 2008 as a reasonable comparison to an adjusted 2006  
24 combined base year was not viable. Therefore, the first  
25 opportunity to utilize an appropriate calendar year for an  
26 NFOM synergy tracking model is 2009. We are now in  
27 the process of preparing the first view of the Phase 2  
28 synergy savings tracking mechanism comparing the  
29 2006 base year, as adjusted for known and measurable  
30 changes, including inflation, to the 2009 “combined  
31 company” budget.

32 (Ives Rebuttal, page 8, lines 14-23 and page 9 lines 1-6,  
33 Case No. ER-2009-0089) (emphasis added)

34 Then in the 2010 Rate Case, Mr. Ives discussed KCPL’s implementation of the Tracking  
35 Model in his direct testimony as follows:

36 **Q: Can you demonstrate that synergy savings**  
37 **exceed the level of the amortized transition costs**  
38 **requested in this case and reflected in CS-95?**

39 A: Yes. As discussed below, the Company  
40 implemented a synergy savings tracking model as

1 ordered by the Commission in the Merger case. The  
2 results from this tracking model clearly demonstrate that  
3 the synergy savings achieved in calendar year 2009  
4 significantly exceed the annual transition costs  
5 amortization requested by KCP&L and confirm the  
6 synergy savings estimates provided by the companies in  
7 the Merger case.

8 (Ives Direct, page 4, lines 3-9, Case No. ER-2010-0355)

9 \* \* \* \*

10 **Q: Please summarize your testimony regarding**  
11 **synergy savings tracking.**

12 A: The objective of the synergy savings tracking  
13 model is to provide a mechanism to evaluate whether  
14 synergy savings achieved exceed the level of  
15 amortization requested in this case. The Commission's  
16 determination that there would be no net detriment to  
17 customers by accepting the applicant's proposal for  
18 utilizing regulatory lag as a sharing mechanism is  
19 consistent with the Company's position in this case that  
20 synergy savings are shared with ratepayers as the  
21 savings are reflected in test-year cost of service through  
22 the normal ratemaking process. Therefore, I request the  
23 Commission find that the Company's synergy tracking  
24 model, maintained as ordered by the Commission in the  
25 Merger case, supports the Company's assertion that  
26 synergy savings exceed the level of transition costs  
27 amortization requested in this case.

28 (Ives Direct, page 9, lines 18-23 and page 10, lines 1-5,  
29 Case No. ER-2010-0355)

30 Q. Has KCPL stated in the past that the Commission Ordered Tracking Model  
31 should be used in future KCPL rate cases?

32 A. Yes. It did so in the rebuttal testimony of Mr. Ives in its 2009 Rate Case where  
33 he testified:

34 ...We believe the Merger Report & Order supports the  
35 concept that the 2006 baseline tracking mechanism is  
36 intended to provide the test to demonstrate that synergy  
37 savings achieved are in excess of the amortization being



1 requested for recovery of transition costs. (Ives rebuttal,  
2 page 10, lines 13-16, ER-2009-0089)

3 \* \* \* \*

4 ...I believe the objective of the synergy savings tracking  
5 model is to provide a mechanism to evaluate whether  
6 synergy savings achieved exceed the level of  
7 amortization requested in cost of service in this case **and**  
8 **future cases in order to recover transition costs.**  
9 Through our two-phase approach to track synergy  
10 savings, I believe we have implemented an effective  
11 synergy savings tracking mechanism, as ordered by the  
12 Commission, which achieves the appropriate objective.  
13 By utilizing regulatory lag as a sharing mechanism,  
14 synergy savings are shared with ratepayers as the  
15 savings are reflected in test-year costs through the  
16 normal ratemaking process...

17 (Ives Rebuttal, page 15, lines 4-11, ER-2009-0089)  
18 (emphasis added)

19 Contrary to Mr. Ives' testimony in this case, KCPL embraced the concept of updating and  
20 maintaining the Commission-ordered Tracking Model to track synergy savings in the 2009  
21 Case and in succeeding rate cases.

22 Q. On page 52, Mr. Ives seems to allege that KCPL and Staff agreed to  
23 *definitively* resolve the Acquisition transition cost issue in ER-2012-0174 ("2012 Rate Case").  
24 Is that correct?

25 A. Absolutely not. Mr. Ives references one of the stipulations in the 2012 Rate  
26 Case in which KCPL and Staff agreed to settle the issue *for that case*. As Mr. Ives is well  
27 aware, the *Non-Unanimous Stipulation And Agreement As To Certain Issues* contains the  
28 following language:

29 2. This Stipulation is being entered into solely for  
30 the purpose of settling the issues/adjustments in these  
31 cases explicitly set forth above. Unless otherwise  
32 explicitly provided herein, none of the Signatories to  
33 this Stipulation shall be deemed to have approved or

1 acquiesced in any ratemaking or procedural principle,  
2 including, without limitation, any cost of service  
3 methodology or determination, depreciation principle or  
4 method, method of cost determination or cost allocation  
5 or revenue-related methodology. Except as explicitly  
6 provided herein, none of the Signatories shall be  
7 prejudiced or bound in any manner by the terms of this  
8 Stipulation in this or any other proceeding, regardless of  
9 whether this Stipulation is approved.

10 3. This Stipulation is a negotiated settlement.  
11 Except as specified herein, the Signatories to this  
12 Stipulation shall not be prejudiced, bound by, or in any  
13 way affected by the terms of this Stipulation: (a) in any  
14 future proceeding; (b) in any proceeding currently  
15 pending under a separate docket; and/or (c) in this  
16 proceeding should the Commission decide not to  
17 approve this Stipulation, or in any way condition its  
18 approval of same.

19 This language is often inserted at the end of stipulations and agreements to protect the parties.  
20 The clear language in this stipulation does not hold any of the parties to any future position,  
21 including positions related to transition cost recovery.

22 Q. In the current case, how has KCPL utilized the Commission Tracking Model?

23 A. Without Commission authorization or even advising the Commission in  
24 advance of doing so, KCPL has abandoned this model in its entirety. KCPL asserts that  
25 because the Commission did not explicitly state in its 2010 Rate Case Report and Order that  
26 KCPL was to continue to use the tracker; it was under no obligation to do so. Mr. Ives argues  
27 on page 62 of his rebuttal testimony that KCPL operates in a non-static business environment  
28 and his view that Commission ordered Tracking Model would require additional adjustments  
29 based on management assumptions to update the model. For that reason KCPL abandoned  
30 use of the model. None of these arguments prevented KCPL from maintaining *its* model  
31 through June 2013. The Commission was fully aware of and considered these factors when it  
32 adopted KCPL's method of tracking synergies and ordered them to employ it. As Mr. Ives

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1 references in his rebuttal testimony at page 62, page 97 of the Acquisition Report and Order  
2 recognized the difficulty of tracking synergy savings on an ongoing basis:

3                   244. Tracking synergy savings with any degree of  
4 accuracy is problematic at best. Business operations are  
5 not conducted in a static environment, but rather under  
6 constant change, including customer growth,  
7 technological improvements, etc. Tracking will become  
8 more difficult each successive year after the merger.  
9 (footnote omitted)

10           Q.     On page 59 of his rebuttal testimony, Mr. Ives states KCPL believes that it  
11 demonstrated in its 2010 Rate Case that the Commission ordered Tracking Model and  
12 KCPL's Synergy Charter Tracker Database ("Charter Database") were "highly correlated."  
13 Do you have a response?

14           A.     As far as I know, neither Staff nor the Commission evaluated these models for  
15 any correlation in KCPL's 2010 rate case. The models are two separate and distinct ways of  
16 looking at synergy savings. The Commission ordered Tracking Model compares a baseline  
17 2006 to a current level of yearly NFOM expenses to determine if synergies continue to  
18 outweigh the amortized transition costs. This is distinct from the KCPL-created Charter  
19 Database, which records cumulative synergy savings, but does not compare the entire span of  
20 NFOM expenses KCPL and GMO incurred; instead, it isolates known synergies and records  
21 the cumulative savings from them. The Charter Database also captures corporate retained  
22 synergies, which the Tracking Model was never designed to do.

23           Witness Ives' claim that the two models are highly correlated carries little to no  
24 weight and should not be accepted as an excuse for not following a Commission order to  
25 produce the Tracking Model.

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1 Q. You stated that that KCPL's Charter Database does not compare the entire  
2 span of NFOM expenses KCPL incurred. Is this problematic?

3 A. It could be. The Commission ordered Tracking Model compares NFOM  
4 operating expenses since the acquisition in July of 2008 to the baseline 2006 year. If KCPL is  
5 unable to properly manage certain NFOM expenses, the model would show substantial  
6 increases from year to year. While the synergy savings recorded in the Charter Database  
7 would be included in a NFOM comparison, any cost increases not captured in that database  
8 would be included as part of the updated Commission ordered Tracking Model.

9 Staff has presented in its Cost of Service Report, and KCPL has not refuted it in its  
10 rebuttal testimony, that both on a combined basis and individually, KCPL and GMO have  
11 some of the highest A&G expenses among Missouri rate regulated electric utilities and  
12 Westar Energy, Inc. ("Westar"), its neighboring Kansas electric utility. These high A&G  
13 costs would certainly be included in a NFOM comparison as per the Commission ordered  
14 Tracking Model, but would not necessarily be included in KCPL's Charter Database because  
15 this database does not measure the entire cost structure of KCPL; it identifies specific  
16 synergies. It would not measure increases in costs such as A&G expenses. There is a distinct  
17 possibility that the Tracking Model would show increased NFOM expenses relative to 2006  
18 baseline costs, as the last time period this model was prepared was in comparison to calendar  
19 2009 NFOM expenses. This comparison will be five years old by the end of this rate case.  
20 There is no way to determine how current NFOM expenses compare with the 2006 base year  
21 NFOM without using the Commission ordered Tracking Model. The Commission ordered  
22 KCPL to maintain the Tracking Model; the burden should not fall on any other party.

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1 Q. On page 59 of his rebuttal testimony, Mr. Ives states KCPL believes that the  
2 Commission ordered Tracking Model results would also show that acquisition synergy  
3 savings exceed amortized transition costs. Do you have a response to that statement?

4 A. Mr. Ives' statement is based on KCPL's view that there is a "high correlation"  
5 between its Charter Database and the Commission ordered Tracking Model. Because that  
6 correlation has not been validated, that belief amounts to sheer speculation.

7 Q. On page 57 of his rebuttal testimony, Mr. Ives states that the Commission  
8 found KCPL complied with the Acquisition Case Report and Order as it related to the  
9 recovery of transition costs in its 2010 Rate Case. What is your response to his claim?

10 A. What the Commission ordered in the 2010 Rate Case concerning  
11 transition cost recovery must be read in concert with what the Commission ordered in  
12 the Acquisition Case.

13 Footnote 930 in the Acquisition Case Report and Order has significant importance as  
14 to what is required of the KCPL to recover transition costs in rates. KCPL has misinterpreted  
15 that statement:

16 <sup>930</sup>The Commission will give consideration to their  
17 [transition costs] recovery in **future rate cases** making  
18 an evaluation as to their reasonableness and prudence.  
19 At that time, the Commission will expect that KCPL and  
20 Aquila demonstrate that the synergy savings exceed the  
21 level of the amortized transition costs included in the  
22 test year cost of service expenses in **future rate cases**.  
23 (emphasis added)

24 The Commission used the statement "future rate cases" twice in this footnote. There is  
25 nothing ambiguous about the plural form of "case."

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1           In its Report and Order in the 2010 Rate Case on page 156, as Mr. Ives quotes at  
2 page 56 of his rebuttal testimony, the Commission does indeed state that KCPL and GMO  
3 complied with the Acquisition Case Report and Order:

4                           45. The Companies accumulated all transition costs  
5 consistent with the Merger Order. The Commission  
6 concludes that the Companies have complied with the  
7 Merger Order as it relates to recovery of transition costs.

8 Staff interprets the 2010 Rate Case as one of the “future rate cases” referenced in  
9 Footnote 930 from the Acquisition Case Report and Order. Staff also interprets the 2014 Rate  
10 Case as one of the “future rate cases” referenced in Footnote 930, because KCPL is requesting  
11 \$3.8 million of amortized transition costs in this case. Paragraph 45 from the 2010 Rate Case  
12 Report and Order recognizes the compliance with the Acquisition Order’s Footnote 930 in  
13 that KCPL demonstrated in one of several “future rate cases” that the synergy savings in the  
14 test year exceeded the amortized transition costs.

15           Q.     Have GPE, KCPL or GMO sought any relief from the Commission’s Report  
16 and Order the Acquisition Case that requires them to use the Tracking Model using a 2006  
17 base year for recovery of Acquisition transition costs?

18           A.     No, not that I am aware of.

19           Q.     Who initiated the synergy tracking method of utilizing a base year 2006 in  
20 comparison to future periods?

21           A.     GPE, KCPL and GMO did so in the Acquisition Case. Throughout KCPL’s  
22 direct filed testimony in the Acquisition Case, it requested a sharing of synergies over the  
23 first five years following GPE’s acquisition of Aquila. Implicit in this request is the  
24 assumption that synergies could be tracked with a reasonable degree of accuracy in the future,  
25 which KCPL now claims cannot be done. While KCPL’s witness Lori Wright did not

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1 recommend tracking synergies in the Acquisition Case, she did describe a method of tracking  
2 synergies in comparison to an adjusted base year, which is the approach the Commission  
3 ultimately adopted.

4 Now only after GPE has acquired Aquila does Mr. Ives allege at page 63 of his  
5 rebuttal testimony that the Commission-ordered tracker has “an inherent limitation that limits  
6 its usefulness as each year after 2006 passes.”

7 Q. Do you have an opinion of how long KCPL should continue to use the  
8 Commission ordered Tracking Model?

9 A. Yes. The model must be maintained over the period of time which the  
10 acquisition transition costs are amortized: five years starting from the date of when the  
11 Commission authorized the amortization – May 4, 2011. Alternatively, if the Commission  
12 accepts Staff’s recommendation to begin the amortization at September 1, 2009, the model  
13 should be used for five years from that date.<sup>1</sup> Another way for KCPL to avoid using  
14 the Tracking Model would be of course to accept Staff’s recommendation to not include  
15 \$3.8 million of amortized transition costs in the cost of service.

16 Q. Do you agree with Mr. Ives statements on page 62 of his rebuttal testimony  
17 that shareholders have already retained the maximum amount of synergy savings and all  
18 benefits are now flowing to ratepayers?

19 A. Absolutely not. Several examples of KCPL and GMO achieving new synergies  
20 from the acquisition and retaining of savings are:

---

<sup>1</sup> In the Staff’s Revenue Requirement Cost of Service Report filed on April 3, 2015, I related at pages 241-42 that the Staff argued in the 2010 and 2012 Cost of Service Reports that the amortization of transition costs should have begun at September 1, 2009 the effective day of rates in KCPL’s first rate case, Case No. ER-2009-0089 (and GMO’s first rate case Case No. ER-2009-0090), post-acquisition Aquila because KCPL and GMO began retaining savings immediately upon the closing of the acquisition.

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- 1 1. KCPL’s retained savings from the 2011 employee reductions  
2 referred to as the Organizational Realignment and Voluntary  
3 Separation (“ORVS”);
- 4 2. KCPL’s proposal to combine inventories as described in the direct  
5 testimony of KCPL witness William P. Herdegen, III, Case No.  
6 ER-2012-0174;
- 7 3. KCPL testimony in the 2010 Rate Case concerning a merger of  
8 KCPL and GMO;
- 9 4. The reductions in GPE and KCPL officer level annual executive  
10 base labor reduction of \$1.7 million (Ives Direct, ER-2012-0174,  
11 page 8); and,
- 12 5. Additional payroll and benefit savings subsequent to the 2012 Rate  
13 Case.

14 Q. How is the 2011 ORVS employee reduction in your first example, related to  
15 the 2008 acquisition of Aquila and additional synergies KCPL and GMO have retained?

16 A. While KCPL has not linked the 2011 employee reductions, which the  
17 Company refers to as “ORVS”, to the Acquisition, additional employee reductions within  
18 five years of the acquisition were certainly contemplated in the Acquisition Case. In his direct  
19 testimony in the Acquisition Case dated April 2, 2007 on page 3, KCPL witness William  
20 Downey identified that employee counts would continue to decline:

21 **Q. What will Great Plains Energy look like**  
22 **following the Merger?**

23 A. ...Similarly, we expect to see little to no change  
24 in the senior management team of Great Plains Energy  
25 and KCPL as a result of the Merger. At Aquila, we  
26 expect to see no immediate reduction in current union  
27 employees, but anticipate eliminating approximately  
28 250-350 overlapping administrative, management and  
29 support positions over a five (5) year period.

30 The 2011 employee reductions were well within the five year period following the acquisition  
31 and can be reasonably linked to additional synergies unlocked by the Acquisition.



1 Staff witness Charles R. Hyneman discussed in detail the 2011 employee reductions  
2 and KCPL and GMO's proposal to recover expenses related to those reductions in his direct  
3 testimony in the 2012 Rate Case. He also discussed in detail how, through regulatory lag,  
4 KCPL and GMO have retained savings above and beyond the costs of the program.

5 Q. How is the combination of inventories proposed in the direct testimony of  
6 KCPL witness William P. Herdegen, III in the 2012 Rate Case in your second example related  
7 to additional synergies from the Acquisition?

8 A. As Mr. Herdegen states on page 16 of his direct testimony in the 2012  
9 Rate Case:

10 **Q: Is there potential for KCP&L and GMO to**  
11 **realize additional savings because of the acquisition?**

12 A: Yes. The ability to avoid inventory redundancies  
13 allows savings that result from having lower inventory  
14 levels.

15 Along with lower inventory levels, witness Herdegen describes operating efficiencies that will  
16 occur if his proposal is approved by the Commission:

17 **Q: In addition to maximizing savings by**  
18 **standardizing parts, suppliers, and contracts, what**  
19 **additional savings will the Companies realize by**  
20 **having a single inventory of materials used by each**  
21 **company?**

22 A: Additional savings are realized by reducing the  
23 redundant level of inventory and easing the process of  
24 sharing items between KCP&L and GMO service  
25 centers. Also, without the current inventory barrier,  
26 efficiencies are gained in the physical processing and  
27 management of the stock.

28 **Q: What impact will a single inventory model**  
29 **have on the Companies' operation?**

30 A: In addition to the improvements in efficiency and  
31 reduction in redundancies described above, the

1 companies expect to see gains in productivity, such as  
2 not having to wait around for the necessary material or  
3 tool, once a single inventory model is implemented...

4 (Herdegen Direct, ER-2012-0174, page 15, lines 10-23)

5 Witness Herdegen's testimony describing acquisition synergies in the 2012 Rate Case is quite  
6 similar to what he presented to the Commission concerning distribution synergies in the  
7 Acquisition Case:

8 **Q: Please discuss integration of Resource**  
9 **Management.**

10 A: ...In the materials area, we will evaluate the total  
11 supply chain approach of both companies and create a  
12 single approach to material acquisition. We will create a  
13 plan to contact current suppliers in both companies to  
14 evaluate material specifications and determine best  
15 suppliers based on overall long-term value. We will  
16 evaluate a central management approach to material  
17 storage and supply for both companies. This review will  
18 include third party warehouse supply approaches and  
19 current industry trends...

20 (Herdegen Direct, page 5, line 23 - page 6, line 9, Case  
21 No. EM-2007-0374)

22 The inventory ownership transfer proposed by Mr. Herdegen undoubtedly unlocked additional  
23 synergies from the Acquisition. After the Commission authorized KCPL's proposal in the  
24 2012 Rate Case, all the savings from reduced inventory levels and the redundancies of  
25 keeping separate inventories were retained by KCPL and consequently shareholders. This is  
26 but one example of how regulatory lag can be a benefit. Mr. Herdegen did not provide an  
27 estimate of the savings attributable to his proposal, but the amount would likely be material  
28 given the inventory inefficiencies described in his testimony.

29 Q. What was the testimony in the 2010 Rate Case concerning a merger of KCPL  
30 and GMO you are referring to for your third example?

1           A.     In the 2010 Rate Case, KCPL's policy witness Curtis Blanc provided  
2 testimony that potential savings would result from a merger between KCPL and GMO  
3 as follows:

4                           **Staff Counsel Nathan Williams:**

5           Q.     Do Kansas City Power and Light Company and  
6 KCP&L Greater Missouri Operations Company have  
7 any plans to merge?

8                           **KCPL Witness Blanc:**

9           A.     Yes. We do plan to merge at some point in time.  
10 We've been in rate case mode for awhile. But after the  
11 rate cases are over, we can think there are potentially  
12 additional savings to be had by merging the two entities.

13          Q.     Does it have any time verizon [*sic*] on when it  
14 might seek to merge those two companies?

15          A.     No definite date set, but I would anticipate  
16 within the next few years we would file an application  
17 before the Commission. But no - - no date has been set  
18 for that.

19                        (Case No. ER-2010-0355, Vol. 14, Tr. 248, l. 25 to Tr.  
20 249, l. 12)

21           KCPL and GMO filed on December 1, 2011, a notice of their intent to file a case with the  
22 Commission seeking to merge, which the Commission designated as File No. EM-2012-0176.  
23 This case was closed February 22, 2012, and KCPL and GMO have not yet pursued that  
24 merger. However, if a merger were to occur there is potential for additional savings, savings  
25 that in part would be retained by natural regulatory lag given the same circumstances as  
26 GPE's 2008 acquisition of Aquila.

27           The point is that Mr. Ives' contention that shareholders can no longer retain additional  
28 synergies is not only untrue; it is contradicted by KCPL witness Herdegen who also testified  
29 in the Acquisition Case.

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Keith Majors

1 Q. What is the basis for your fourth example, the reductions in base  
2 executive labor?

3 A. In his direct testimony in the 2012 Rate Case, Mr. Ives states that since the  
4 acquisition, KCPL has reduced its number of executives by eight and annual executive base  
5 labor by \$1.7 million. With the addition of benefits to this amount (at KCPL's estimated 60%  
6 rate), KCPL will have reduced executive labor expenses by \$2.7 million. To the extent these  
7 executives left between rate cases, these additional synergies KCPL and GMO have been able  
8 to extract will be retained by its shareholders through natural regulatory lag.

9 Q. What is the basis for your fifth example, the reductions in additional payroll  
10 and benefit savings subsequent to the 2012 Rate Case?

11 A. KCPL has reduced its employee headcount after its last rate case, Case No.  
12 ER-2012-0174, by about 160 employees. This has resulted in substantial savings retained by  
13 KCPL. Staff witness Cary G. Featherstone detailed these and other cost savings in his  
14 rebuttal testimony. The table below is a summary of those savings through December 31,  
15 2014, May 31, 2015, and September 29, 2015 (the effective date of rates):

16

Begin Date of Savings	End Date of Savings	Net Payroll Savings	Benefit & Tax Adder	Total Savings	Total KCPL Savings	Missouri Jurisdictional Savings
September 1, 2012	December 31, 2014	\$22,019,105	0.6	\$35.2 million	\$23.1 million	<b>\$12.3 million</b>
September 1, 2012	May 31, 2015	\$28,211,533	0.6	\$45.1 million	\$29.7 million	<b>\$15.8 million</b>
September 1, 2012	September 29, 2015	\$33,173,678	0.6	\$53.1 million	\$34.9 million	<b>\$18.6 million</b>

17

18 Q. On page 63 of his rebuttal testimony, Mr. Ives discusses Staff's Federal Energy  
19 Regulatory Commission (FERC) Form 1 analysis of KCPL's and GMO's A&G expenses.  
20 Does his testimony refute Staff's findings?

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1           A.     No. KCPL is unable to refute the factual results of Staff’s analysis or its  
2 conclusion presented in my direct testimony that KCPL’s A&G expenses are the highest per  
3 customer, the third highest per megawatt hour (“MWh”) sold, and highest per dollar of  
4 electric operating revenue. Staff compared KCPL and GMO, as combined companies with  
5 Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”), The Empire District  
6 Electric Company (“Empire”), and Westar. Staff provided the analysis and the supporting  
7 documentation to KCPL in the workpapers to my direct testimony. KCPL has not provided  
8 any persuasive counter-analysis or evidence that the FERC Form 1 comparison to A&G  
9 expenses of Ameren Missouri, Empire, and Westar electric utilities is not a fair comparison  
10 and is not demonstrative of pervasively high A&G expenses of KCPL and GMO, both in their  
11 own right and when compared to adjacent utilities.

12           Q.     Has KCPL in prior cases recognized the usefulness of using FERC Form 1  
13 data between electric utilities in measuring synergies?

14           A.     Yes. KCPL’s witness in the Acquisition Case, William J. Kemp, on page 18 of  
15 his Supplemental Direct testimony filed August 8, 2007, testified:

16                   **Q:     What types of synergy data from other utility**  
17                   **transaction can be compared with KCPL’s**  
18                   **estimates?**

19                   A.     Essentially two types of synergy data are  
20                   available from other utility transactions.

21                                   \* \* \* \*

22                   Realized synergies are the actual reductions in real costs  
23                   (or merger-related increases in revenue) that are  
24                   achieved by the merged company. **Data on realized**  
25                   **synergies are most reliably and consistently obtained**  
26                   **from utilities’ annual filings to FERC on their actual**  
27                   **costs of utility operations (FERC Forms 1 and 2).**  
28                   These data must be reviewed carefully, as organizational  
29                   changes, changes in operating models, one-time events

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1 (large storms or extreme weather), changes in  
2 accounting methods, changes in industry structure, and  
3 subsequent M&A transactions can distort the filed costs.  
4 (emphasis added)

5 Staff's analysis, while not as broad as witness Kemp's analysis in the Acquisition  
6 Case, demonstrates that KCPL and GMO have the highest A&G expenses among Missouri  
7 electric utilities.

8 Q. Did the Commission rely on Witness Kemp's FERC Form 1 and 2 analyses in  
9 the Acquisition Case?

10 A. Yes it did. In fact, the Commission adopted his testimony in its Report  
11 and Order:

12 239. The Commission further adopts Mr. Kemp's  
13 prefiled testimony in its totality as findings of fact (with  
14 the exclusion of the irrelevant materials identified in  
15 Finding of Fact Numbers 236), but his testimony will  
16 also be considered in depth in another portion of this  
17 order and additional specific findings regarding his  
18 testimony will be made in relation to his testimony at  
19 that time. (footnote omitted)

20 Q. Have any of the facts or circumstances regarding KCPL's or GMO's A&G  
21 expenses changed from KCPL's last case to now?

22 A. Absolutely. First, KCPL has abandoned the Commission ordered Tracking  
23 Model. If KCPL had maintained the model, it would reflect KCPL's and GMO's  
24 exceptionally high and increasing A&G expenses. The Tracking Model compares 2006 to  
25 future NFOM costs.

26 Second, Staff has compiled FERC Form 1 data from KCPL, GMO, Ameren Missouri,  
27 Empire, and Westar for 2009-2014. Staff expanded the A&G analysis to include the utility

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1 peer group used by KCPL to determine executive compensation. Staff's analysis shows  
2 KCPL's A&G costs are among the highest in both group comparisons.

3 On page 63 of Mr. Ives' rebuttal testimony in this case, he recommends the  
4 Commission ignore the clear evidence of KCPL's and GMO's high A&G costs. On the  
5 contrary, the high A&G costs are evidence that customers should not be forced to  
6 pay \$3.8 million per year for synergies that may have been exceeded by KCPL's increased  
7 A&G expenses.

8 Q. Mr. Ives argues on page 64 of his rebuttal testimony that Staff presents no new  
9 evidence concerning the start of the amortization of transition costs. How do you respond?

10 A. Staff cited in its Cost of Service Report the Commission's Finding of Fact 448  
11 in the Commission's 2010 Report and Order. In its finding, the Commission recognized that  
12 KCPL and GMO began to retain synergy savings immediately upon the closing of the  
13 acquisition on July 14, 2008. Staff recommends in this proceeding that the amortization of  
14 transition costs should be assumed to have started on September 1, 2009. As the Commission  
15 is well aware the 2009 Rate Case settled. However, synergies in the form of reduced  
16 headcount and insurance were flowing to ratepayers at that time. Staff's direct filed case in  
17 that 2009 Rate Case included reduced headcounts from the acquisition as of September 30,  
18 2008, and these reductions were reflected in Staff's revenue requirement recommendation.  
19 Although the 2009 Rate Case was a settled case, the revenue requirement upon which that  
20 settlement was based included acquisition synergies. Witness Ives supported this concept in  
21 his rebuttal testimony in the 2010 Rate Case:

22 .... In case ER-2009-0089 and ER-2009-0090,  
23 KCP&L's and GMO's last rate cases with rates effective  
24 September 1, 2009, the cases were settled with no  
25 mention in the Stipulation and Agreement with regard to

1 synergy savings or transition costs; however, synergy  
2 savings related to FTE reductions (including related  
3 benefits), facilities retirements (removal from rate base  
4 and cost of service) and lower insurance costs for the  
5 combined companies' were included in both the  
6 companies' and Staff's direct filed cases.....

7 (Ives Rebuttal, page 7. lines 10-19, Case No. ER-2010-  
8 0355)

9 Not starting the amortization at the same time as when the acquisition closed results in a  
10 mismatch of costs and benefits, a key tenet of the "matching principle." If ratepayers were  
11 receiving the benefit of acquisition synergies, they were implicitly paying for the costs of  
12 those benefits—the amortized transition costs. KCPL maintained the full value of the  
13 transition costs on its books and records nearly three years after benefits from the acquisition  
14 began and over a year and a half after some of those benefits were being flowed to ratepayers.

15 While the fact that synergies were retained by KCPL and GMO immediately  
16 following the acquisition and that synergies were flowed to ratepayers in the 2009 Rate Case  
17 is not new evidence, Staff encourages the Commission to consider the "matching principle"  
18 and its impact on the start date of the amortization of transition costs, if the Commission  
19 continues to include an annual amount of their amortization in cost of service.

20 Q. The Commission found in the 2010 KCPL and GMO Rate Cases that KCPL  
21 and GMO had retained significant synergy savings. In combination with the transition costs  
22 that are currently being amortized, how much will KCPL and GMO have recovered through  
23 retained synergies and amortized transition costs by the time rates decided in this case are  
24 expected to be effective?

25 A. On page 154 of its 2010 Rate Case Order, the Commission indicated that as of  
26 June 30, 2010, the shareholders of KCPL and GMO had realized approximately \$121 million



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1 in retained synergy savings. Through December 31, 2014, KCPL and GMO has received  
2 \$29.7 million in amortized transition costs in the cost of service, for a total of over  
3 \$150 million in recovery of costs. This far outweighs the total amount of transition costs of  
4 \$41.5 million and the remaining costs to be amortized of \$11.7 million.

5 On page 60 of his rebuttal testimony, Mr. Ives states that the Company achieved  
6 \$367.5 million of regulated savings, with \$167 million going to customers, and  
7 \$200.5 million retained by shareholders.

8 Q. If the Commission grants additional recovery of these transition costs in the  
9 cost of service, do you have any other recommendations?

10 A. Yes. The beginning date of amortization, which Staff contests, is May 4, 2011.  
11 The five-year amortization will end April 2016. At this date KCPL will begin over-collecting  
12 \$3.8 million per year. Staff recommends the Commission order KCPL to track the  
13 over-collection as a regulatory liability for return to customers or offset of a regulatory asset  
14 in a future rate case.

15 Q. You have testified at length regarding transition costs and their recovery.  
16 Please summarize your testimony on this issue.

17 A. My points for why the Commission should end inclusion of the annual amount  
18 of the five-year amortization of transition costs in the KCPL revenue requirement are as  
19 follows: 1) KCPL and GMO have abandoned the method of tracking synergies the  
20 Commission ordered in the Acquisition Case, 2) KCPL has already recovered the transition  
21 costs through retained synergies between rate cases, 3) KCPL and GMO A&G expenses are  
22 among the highest of other Missouri investor-owned electric utility and Westar, as well as  
23 among the highest of KCPL's peer utility group, 4) GPE has received millions of dollars of

1 corporate-retained benefits, such as the tax loss benefits from Aquila acquired in the  
2 Acquisition, which solely benefits shareholders. If the Commission continues to include the  
3 annual amount of the five-year amortization of transition costs in the KCPL revenue  
4 requirement, then to better match the costs of synergies with the benefits to ratepayers the  
5 five-year amortization of transition costs should be treated as having started at September 1,  
6 2009, in which case the amortization would have concluded.

7 **CONTINUATION OF CONSTRUCTION ACCOUNTING FOR LA CYGNE**  
8 **ENVIRONMENTAL RETROFIT PROJECT**

9 Q. What is Staff's recommendation regarding the La Cygne construction  
10 accounting deferrals?

11 A. Staff recommends no rate recovery of any of the La Cygne construction  
12 accounting deferrals. This is discussed in further detail in Staff's Cost of Service report on  
13 pages 226 through 229 and in my rebuttal testimony on pages 3 through 26.

14 Q. Is there a "theme" to KCPL witness Klote's rebuttal testimony concerning  
15 La Cygne construction accounting?

16 A. Throughout his testimony, Mr. Klote relies on KCPL's alleged earnings  
17 deficiency to justify KCPL's claim that the La Cygne environmental retrofit project is  
18 extraordinary and that absolutely no adjustments or offsets should be made. It is essentially a  
19 "take it or leave it" request.

20 This theme appears throughout KCPL's rebuttal testimonies; that is, KCPL's earnings  
21 deficiency justifies KCPL's numerous "tracker" requests, retaining over-collections of  
22 amortizations that ratepayers have paid over and above the original amounts, and retaining the  
23 extraordinary cost decrease of the DOE nuclear waste fund fees.

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1 Q. On page 42 of his rebuttal testimony, KCPL witness Klote says he is  
2 “surprised” that Staff made the arguments it did and questions the value of “re-litigating”  
3 this issue. How do you respond?

4 A. First, a short procedural history of this issue is required. KCPL filed its *Notice*  
5 *of Intended Case Filing* on March 19, 2014 with respect to establishing construction  
6 accounting for the La Cygne environmental project. KCPL filed its *Application* on June 12,  
7 2014 requesting this treatment in the form of an accounting authority order (AAO) designated  
8 as Case No. EU-2014-0255. Staff filed rebuttal testimony on November 14, 2014, and KCPL  
9 and Public Counsel filed surrebuttal testimony on December 10, 2014.

10 Meanwhile, KCPL filed its *Notice of Intended Case Filing* on June 25, 2014 for its  
11 general rate case which it filed October 30, 2014 as Case No. ER-2014-0370. Included in the  
12 direct testimony of witness Klote is an adjustment to include the La Cygne deferrals in rate  
13 base and an amortization of the deferrals in expense. Therefore, KCPL was requesting  
14 recognition of the same expenses concurrently in two active dockets before the Commission.

15 Staff initially opposed KCPL’s *Application* in Case No. EU-2014-0255. However, if  
16 Staff and KCPL were to have fully litigated the AAO case, the Commission would have to  
17 hear this issue *twice* because KCPL filed both the AAO case and its rate case with essentially  
18 the same request. It is Staff’s opinion that the AAO application was unnecessary and KCPL  
19 should have only requested the La Cygne construction accounting in the rate case. It would  
20 have been a waste of the Commission’s time and resources to re-litigate the exact same issues  
21 within six months.

22 Therefore, Staff agreed to the *Second Non-Unanimous Stipulation and Agreement*  
23 (Stipulation) **only** to avoid litigating this issue twice before the Commission.

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1 Q. Has this issue been fully litigated before the Commission?

2 A. No, and I would dispute witness Klote's characterization of such in his  
3 rebuttal testimony.

4 I have attached the Stipulation as Schedule KM-s1 which includes this specific  
5 language on page 3:

6 e. Provide that nothing in this *Agreement* or the  
7 Commission's order shall limit the arguments (including  
8 arguments for offsets to the deferred amounts) any party  
9 to Case No. ER-2014-370 may make to contest  
10 ratemaking treatment of all, or any part, of the amounts  
11 KCP&L defers by construction accounting for the  
12 La Cygne Environmental Project.

13 The Commission's order approving the Stipulation simply gives KCPL authority to continue  
14 to book the La Cygne environmental retrofit project costs to capital accounts and to defer  
15 accruing depreciation, nothing more. The Commission did not convene a hearing on this  
16 issue, it did not receive briefs, nor did it issue an order concerning Staff and KCPL's  
17 arguments. KCPL's characterization is disingenuous.

18 Q. Has the Commission determined whether the La Cygne environmental retrofit  
19 project is an extraordinary event deserving of the special ratemaking treatment KCPL seeks?

20 A. No, and that is why Staff has made its arguments that it is not extraordinary in  
21 this case. Generally, the Commission has said that the standards for granting the authority to  
22 a utility to defer costs incurred outside of a test year as a regulatory asset are: 1) the costs  
23 relate to an event that is extraordinary, unusual, and infrequent, and 2) the costs associated  
24 with the event are material. However, nowhere in Commission's *Order Approving Second*  
25 *Non-Unanimous Stipulation and Agreement* in Case No. EU-2014-0255 did the Commission

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1 find KCPL's request met these standards; rather, the Commission authorized deferral of the  
2 depreciation and carrying costs.

3 Q. Witness Klote alleges Staff failed to consider the financial impact of the  
4 La Cygne Environmental Project "in light of the current environment" on page 42 of his  
5 testimony. How do you respond?

6 A. I assume he is referencing KCPL's Missouri earnings in 2014. Staff  
7 objectively analyzed the La Cygne construction accounting deferrals and came to the  
8 conclusion, based on prior Commission guidance, that these costs are not extraordinary,  
9 unique, or unusual. KCPL's Missouri earnings should not dictate whether or not something is  
10 extraordinary; it is the event itself that should be judged by its own merits. Put another way,  
11 if KCPL were earning a 12% Missouri ROE it would likely not be making this request, and  
12 KCPL would not be calling these costs "extraordinary."

13 Q. Witness Klote alleges "every significant environmental retrofit undertaken by  
14 electric utilities in the past seven or eight years has received Commission authorization to use  
15 construction accounting" on page 43 of his rebuttal testimony. How do you respond?

16 A. His statement is not true. These are recent retrofits for which this Commission  
17 has **not** authorized the utility to use construction accounting:

- 18 • La Cygne 1 Selective Catalytic Reduction (SCR) – KCPL – in-service 2007
- 19 • Sibley 3 SCR – GMO – in-service 2009
- 20 • Asbury SCR – Empire – in-service 2007
- 21 • Jeffrey 1, 2, and 3 Flue Gas Desulphurization (FGD) rebuild – GMO –  
22 in-service 2009

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- 1 • Jeffrey SCR and SNCR<sup>2</sup> – GMO – in-service 2014
- 2 • Asbury FGD and particulate control – Empire – in-service 2015

3 Staff considers these projects “significant,” and they were completed and included in rate base  
4 without the use of construction accounting.

5 The rebuild of KCPL’s Hawthorn Unit 5 after the February 1999 explosion included a  
6 new FGD, SCR, and baghouse for particulate control, as well as a new boiler. The rebuild  
7 was completed in 2001 without the use of construction accounting or even a rate case.

8 Q. Staff recommended certain adjustments be made to KCPL’s calculation of the  
9 deferrals. On page 45 of his rebuttal testimony KCPL witness Klote disagrees with Staff’s  
10 Adjustment 1 to the deferrals. What is your response?

11 A. By Adjustment 1 Staff is recommending that the base on which carrying costs  
12 are calculated be offset by the amount of non-environmental La Cygne depreciation reserve  
13 from the true-up date through the effective date of KCPL’s new rates in this case. KCPL’s  
14 request to include depreciation expense and carrying costs through the effective date of its  
15 new rates is a departure from other items that are recognized only through the true-up cutoff  
16 at May 31, 2015. Recognizing the additional depreciation reserve on La Cygne plant not a  
17 part of the environmental project fairly recognizes the reduced overall net investment for that  
18 plant asset. Staff’s adjustment is fair, warranted, reasonable, and consistent with normal  
19 ratemaking practices.

20 Q. On pages 45-46 of his rebuttal testimony KCPL witness Klote disagrees with  
21 Staff’s Adjustment 2 to the deferrals. What is your response?

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<sup>2</sup> Selective Non-Catalytic Reduction.

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1           A.     By Adjustment 2 Staff is recommending that the base on which carrying costs  
2 are calculated be offset by the monthly depreciation deferral. In other words, “interest”  
3 should not be calculated on depreciation, it should be calculated on the net investment. This  
4 is the same concept of reducing gross plant investment by accumulated reserve when  
5 calculating the rate base on which KCPL earns a return. Staff’s adjustment is fair, warranted,  
6 reasonable, and consistent with normal ratemaking practices.

7           Q.     On pages 46-47 of his rebuttal testimony KCPL witness Klote disagrees with  
8 Staff’s Adjustments 3 and 4 to the deferrals. What is your response?

9           A.     By Adjustments 3 and 4 Staff is recommending that the base on which carrying  
10 costs are calculated be offset by the amount of ADIT created by the La Cygne environmental  
11 retrofit plant, and the ADIT created by the monthly deferrals themselves. I explain in detail  
12 what ADIT is on pages 26-27 of my rebuttal testimony.

13           KCPL witness Klote attempts to link the ADIT to actual cash tax payments to the IRS.  
14 On the other hand, AFUDC, depreciation, and carrying costs are all *non-cash* items. The  
15 AFUDC debt rate is derived from cash interest payments, but the equity rate portion is not,  
16 and there are no cash payments for debt and equity directly linked to the assets in question.  
17 AFUDC is *accrued*; it is not actually paid to anyone. By the same token, when an asset is  
18 transferred to plant in service, depreciation begins, and ADIT is *accrued* on the books and  
19 records, although no cash tax is paid at that time. The actual timing of the cash tax payments  
20 is irrelevant regarding this issue. Staff’s adjustment is fair, warranted, reasonable and  
21 consistent with normal ratemaking practices.

22           Q.     On pages 48-49 of his rebuttal testimony KCPL witness Klote addresses  
23 Staff’s Adjustment 5 to the deferrals. What is your response?

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1           A.     The Commission ordered that the rate used for carrying costs should be the  
2 AFUDC rate in the last month before La Cygne 2 and common plant become operational.  
3 There is no apparent disagreement on this point.

4           Q.     On page 49 of his rebuttal testimony KCPL witness Klote disagrees with  
5 Staff's Adjustment 6 to the deferrals. What is your response?

6           A.     By Adjustment 6 Staff is recommending that the Commission reduce the  
7 equity rate used in the calculation of AFUDC for carrying costs for the construction  
8 accounting deferrals. Generally, the return on equity compensates shareholders for the risks  
9 inherent in owning equity in a utility. Part of that risk is regulatory lag, both positive and  
10 negative. If the Commission authorizes recovery of construction accounting deferrals for the  
11 La Cygne environmental retrofit project, a substantial amount of risk to shareholders will be  
12 removed. To reflect this reduction in risk, a reduction in the equity rate should be used to  
13 calculate AFUDC for construction accounting carrying costs.

14          Q.     Has the Commission reduced the equity rate in the past when it allowed  
15 recovery of amounts deferred under construction accounting?

16          A.     Yes. The construction accounting for Iatan 2 included a reduction in the equity  
17 rate for carrying costs for both the AFUDC accrued during construction and the carrying costs  
18 for construction accounting. This was included as part of the terms of the Regulatory Plan  
19 the Commission adopted in Case No. EO-2005-0329. This reduction was 250 basis points  
20 (2.50%), the same reduction Staff recommends for this deferral, if the Commission  
21 approves recovery.

22          Q.     KCPL witness Klote seems to rely on the FERC Uniform System of Accounts  
23 (USOA) for definitive guidance on the equity cost rate for AFUDC. How do you respond?



1           A.     I also quoted the same passage from the USOA in my rebuttal testimony.  
2     KCPL agreed to use a reduced equity rate in the calculation of AFUDC in the Regulatory  
3     Plan, so I conclude that witness Klote does not believe a reduction in the equity rate used for  
4     AFUDC would violate the USOA.

5           Q.     In light of KCPL witness Klote's rebuttal testimony, would you summarize  
6     Staff's current recommendations to the Commission on recovery of the amounts KCPL has  
7     deferred under continuation of construction accounting for the La Cygne environmental  
8     retrofit project?

9           A.     Staff recommends that the Commission reject allowing KCPL recovery in  
10    retail rates of its La Cygne construction accounting deferrals. The expenses in question do  
11    not meet the Commission's standard of extraordinary. The expenses are not extraordinary,  
12    unique, and unusual, or non-recurring. The La Cygne environmental project does not rise to  
13    the level of other more substantial construction projects that have been authorized for  
14    construction accounting. Therefore, KCPL's request to recover deferred costs relating to the  
15    La Cygne environmental retrofit project should be denied.

16    **DOE NUCLEAR WASTE FUND FEES**

17           Q.     What is Staff's recommendation regarding the DOE nuclear waste fund fees?

18           A.     Staff recommends the amount of the Missouri jurisdictional savings be  
19    accumulated into a regulatory liability and returned to customers as a reduction to nuclear fuel  
20    expense over five years. Staff's rationale is detailed in Staff's cost of service report filed on  
21    April 3, 2015 on pages 97-100.

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1 Q. Provide a brief history of this issue before the Commission.

2 A. Staff filed its *Petition for Accounting Order* on October 9, 2014 for the  
3 Commission to order KCPL to record the amount of DOE nuclear waste fund fees collected  
4 in Missouri retail customer rates docketed as File No. EU-2015-0094. Staff and KCPL  
5 filed their *Joint Motion to Consolidate Cases* on January 19, 2015. The Commission  
6 consolidated EU-2015-0094 with ER-2014-0370 in its *Order Consolidating Cases* effective  
7 January 30, 2015.

8 Q. On page 9 of his rebuttal testimony, KCPL witness Klote characterizes several  
9 Staff adjustments, including Staff's proposal to flow to KCPL's retail customers the amounts  
10 KCPL received from them in retail rates for DOE nuclear waste fund fees that DOE stopped  
11 collecting May 16, 2014, as "retroactive" and that they "change the ratemaking and regulatory  
12 accounting framework". How do you respond?

13 A. AAOs and their amortizations are not intended to unjustly enrich a utility.  
14 They are intended, if granted ratemaking treatment, to make a utility whole, not overly whole,  
15 for the financial impact of certain extraordinary events. Rate cases and the end of  
16 amortizations are rarely, if ever perfectly matched. I am not aware of any AAO or regulatory  
17 asset amortization that has been under-collected by KCPL in rates, but I can point to the  
18 amortization of rate case expenses and Wolf Creek refueling expenses that have been, and are  
19 currently being, over-collected, and Staff has addressed them appropriately by offsetting other  
20 regulatory assets or returning them to customers.

21 Q. On that same page KCPL witness Klote alleges that Staff violates the  
22 prohibition against retroactive ratemaking with its recommendation on this issue. How do  
23 you respond?

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1           A.     I believe witness Klote’s allegation is a legal conclusion, so I will not address  
2 it directly. However, KCPL ceased to pay the DOE nuclear waste fund fees on May 16, 2014,  
3 *after* the end of the test year and *before* the true-up of May 31, 2015. The cessation of the  
4 DOE fee payments could not be more relevant in this case considering KCPL’s several  
5 self-serving proposals to track expenses and retain over-collected amortizations.

6           Q.     On page 10 of his rebuttal testimony, KCPL witness Klote states, “The effect  
7 of this Staff proposal would be to reduce KCP&L’s earnings levels for the period May 16,  
8 2014 through September 29, 2015 . . .”. Is this correct?

9           A.     No. In its direct case, Staff recommended the DOE fees from May 16, 2014  
10 through May 31, 2015, be accumulated and returned to customers over five years, and Staff  
11 recommends no rate recovery of La Cygne construction accounting deferrals. However, if the  
12 Commission allows recovery of La Cygne construction accounting deferrals calculated  
13 through September 29, 2015 (the effective date of rates), Staff recommends the amounts of  
14 the amortizations and DOE fees, which KCPL will collect through the effective date of rates  
15 should be recognized through that date and returned to customers. Construction accounting is  
16 unique because it recognizes expenses past the May 31, 2015, true-up cutoff date. This  
17 extraordinary rate treatment should be applied infrequently. Staff has identified several  
18 amortizations where KCPL has over-collected, as well as the benefit of reduced DOE  
19 nuclear waste fund fees. Staff recommends return of these amounts to KCPL’s Missouri  
20 retail customers.

21           Q.     Would you briefly explain the rationale Staff gave in its revenue requirement  
22 cost of service report for why the Commission should order the return of the DOE nuclear  
23 waste fund fees to customers?

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1           A.       Staff concludes the Court order declaring that the DOE fee be reduced to zero  
2 qualifies as an “extraordinary event.” Generally, the Commission in prior cases has stated  
3 that the standards for granting the authority to, or in this case, ordering, a utility to defer costs  
4 incurred outside of a test year as a regulatory asset are 1) that the costs pertain to an event that  
5 is extraordinary, unusual and unique, and not recurring; and 2) that the costs associated with  
6 the event are material. Staff considers the abrupt termination of the payment of the DOE fees  
7 after KCPL incurred these costs for nearly 30 years to be unusual, unique, and non-recurring,  
8 and consequently extraordinary.

9           The DOE fees were like a tax that is levied for a specific public policy purpose; in this  
10 case, to fund disposal activities related to spent nuclear fuel and high level waste storage for  
11 the protection of the public health. If amounts recovered in rates by KCPL related to  
12 DOE funding can no longer be dedicated to that purpose, it is equitable to use the current  
13 over-recovery of this item for some alternative purpose useful to KCPL’s customers rather  
14 than simply allow KCPL to book increased earnings as a result.

15           The DOE payments ceased due to a court order, and the action of halting the payments  
16 was not in any way within KCPL’s control, making the impact of the court order an unearned  
17 financial “windfall” for KCPL. The DOE fees were mandated by the federal government for  
18 the specific and sole purpose of the long-term storage of radioactive waste from the use of  
19 nuclear fuel and related materials. The United States government had, and has, the sole  
20 responsibility and obligation to take ultimate possession of nuclear waste for storage and  
21 disposal. To date, the DOE has failed to do so. The regulatory commissioners throughout the  
22 country were instrumental in bringing the case before the courts as members of the National  
23 Association of Regulatory Commissioners (“NARUC”). A federal court determined

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1 that utility owners of nuclear power plants were no longer under obligation to make  
2 further payments to the DOE at this time as DOE did not meet its obligations of disposing  
3 nuclear waste.

4 Q. How is the reduction of DOE fees different than other expense reductions?

5 A. The cessation of the DOE fees is different than other expenses that can and do  
6 vary between rate cases. For example, since the August 31, 2012 true-up of the 2012 Rate  
7 case, through December 31, 2014, KCPL reduced its workforce about 160 employees. The  
8 KCPL Missouri jurisdictional payroll and benefit savings through the effective date of rates is  
9 \$18.6 million. To KCPL's benefit, Staff appropriately included full payroll and benefit costs  
10 related to these employees in KCPL's cost of service in the 2012 Rate Case, and KCPL  
11 retained the earnings benefits resulting from those reductions and will continue to retain that  
12 benefit until rates are changed in this case. As payroll and benefits are part of the many  
13 normal expenses and revenues that form the entire picture of a utility's cost of service, Staff  
14 does not believe it would be appropriate to capture these expense reductions in a regulatory  
15 liability account, unlike in the more unique circumstances of the DOE fees.

16 Q. What is Staff's recommendation on the DOE nuclear waste fund fees?

17 A. Because the cessation of the DOE fees is an "extraordinary event" Staff  
18 recommends that the Commission order KCPL to establish a regulatory liability for the  
19 amount of the DOE fees collected from Missouri ratepayers from May 16, 2014, through  
20 May 31, 2015, and return that amount to its retail customers over five years, i.e., take that  
21 total, divide it by five and include the result as a reduction to KCPL's cost of service. If the  
22 Commission allows KCPL to recover through its Missouri retail customer rates the La Cygne  
23 construction accounting deferrals, which reach beyond the true-up cutoff, the Staff

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1 recommends that the Commission also require that the DOE fees from the end of the true-up  
2 period until new rates take effect—June 1, 2015 through about September 28, 2015—also be  
3 returned to KCPL’s Missouri retail customers.

4 Q. Do you have any other comments regarding KCPL’s opposition to “returning”  
5 to its retail customers through their rates amounts KCPL collected in its past rates for DOE  
6 spent nuclear fuel storage fees that it did not ultimately pay to the DOE?

7 A. Yes, according to KCPL witness Klote on page 11 of his rebuttal testimony,  
8 it is perfectly reasonable for a utility to defer all manner of expenses and recover those  
9 costs from ratepayers, and to keep over-collection of deferrals, but “patently unreasonable” to  
10 give ratepayers credit for KCPL’s over-collections of amortizations and the DOE fees.  
11 This one-sided approach to regulation should not go unnoticed by the Commission.

12 **BAD DEBT EXPENSE**

13 Q. What is Staff’s recommendation regarding the bad debt factor-up?

14 A. KCPL’s request to include an adjustment for bad debt expense associated with  
15 a revenue requirement increase (or decrease) is commonly referred to as bad debt “factor-up”  
16 or “gross-up.” This adjustment is identified in the direct and rebuttal testimonies of KCPL  
17 witness Klote. Staff recommends that this *pro forma* expense not be included in KCPL’s cost  
18 of service. No direct correlation exists between an increase in rates and bad debt expense to  
19 justify including additional bad debt expense on the amount of the requested rate increase.

20 KCPL’s rationale for making this request is based on an assumption that lacks any  
21 factual evidence to support its assumption. I would note that witness Klote has not identified  
22 any study or evidence that bad debts have a correlation to revenues that would justify  
23 inclusion of a bad debt factor up. On the other hand, Staff has analyzed KCPL’s historical

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1 Missouri retail revenues and net write-offs over nearly ten years to determine if a direct and  
2 proportional relationship exists with Missouri retail revenues and bad debt expense. Staff's  
3 analysis of the actual net write-offs as compared to related revenues shows no correlation, and  
4 in many cases bad debts and revenues move in opposite directions. Staff recommends that the  
5 Commission deny KCPL's request to adopt KCPL's proposed bad debt "factor up" for bad  
6 debts. However, in the event that the Commission does grant KCPL's request to "factor up"  
7 bad debt expense proportionate with an increase in revenue requirement, Staff recommends to  
8 also reflect in the bad debt "factor-up" additional forfeited discounts (late payment fees) that  
9 will increase as result of the rate increase<sup>3</sup>.

10 Q. What analysis did Staff perform concerning bad debts compared to revenues?

11 A. In my rebuttal testimony, I provided several tables and graphical analysis to  
12 demonstrate the fallacy of what appears to be an obvious assumption: increased revenues lead  
13 to increased bad debt. In theory, this assumption appears reasonable. In practice, this theory  
14 simply does not hold true. I have attached this Staff's analysis, which compares monthly bad  
15 debt to revenues from 2005 through June 2014<sup>4</sup> as Highly Confidential Schedule KM-s2.  
16 It shows in about half of the months, bad debts and revenues move in opposite directions, and  
17 no direct correlation. Staff compared the percentage change in the monthly bad debt to  
18 revenues during the same period, again with no direct correlation between bad debts and  
19 revenues. Finally, Staff compared the quarterly twelve month ratio of bad debts to revenues  
20 capturing the last five rate increases. The results show that KCPL's bad debt ratio has  
21 fluctuated over time with no discernable trend.

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<sup>3</sup> Majors Rebuttal Testimony includes additional analysis on the relationship to Missouri retail revenues and forfeited discounts.

<sup>4</sup> The approximate time to "write-off" bad debts is six months. Therefore, bad debts in a given month relate to revenues six months prior. Staff's December 31, 2014 cutoff analysis captures December 2014 bad debts that relate to June 2014 revenues.

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1 Q. On page 23 of his rebuttal testimony, witness Klote states “the application  
2 of the bad debt factor to the rate increase was approved by the Commission in Case No.  
3 ER-2006-0314.” What did the Commission conclude in that case?

4 A. On page 63 of the Commission Order in Case No. ER-2006-0314, the  
5 Commission states:

6 The Commission finds that the competent and  
7 substantial evidence supports KCPL’s position, and  
8 finds this issue in favor of KCPL. The Commission  
9 understands Staff’s argument that there is not a perfect  
10 positive correlation between retail sales and the  
11 percentage of bad debts. While it’s possible that KCPL’s  
12 bad debt expense could decrease, the Commission finds  
13 it more probable, and therefore just and reasonable, that  
14 an increase in the amount of revenue that KCPL is  
15 allowed to collect from its Missouri retail ratepayers will  
16 result in a corresponding increase in bad debt expense.

17 Q. Are there additional facts supporting Staff’s position that were not presented to  
18 the Commission in KCPL’s 2006 rate case?

19 A. Yes. Staff now has analyzed bad debt and revenue data related to the five rate  
20 increases since 2006. The data presented to the Commission in the 2006 rate case was for the  
21 period 2000-2005. At that time, KCPL had not received a rate increase since the 1985 Wolf  
22 Creek case. Using that data, it was difficult to prove that a rate increase would not result in an  
23 increase in bad debts. Using data from 2005 through 2014 captures the five rate increases and  
24 proves that no discernable relationship between bad debts and revenues exists.

25 Q. Would Staff require evidence of a *perfect* correlation between bad debt and  
26 revenues to recommend the inclusion of a bad debt factor-up?

27 A. No. The evidence shows not only lack of a perfect correlation, but also lack of  
28 a general correlation. The table and graph of the quarterly 12 month bad debt percentage of



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1 revenues, attached as Highly Confidential Schedule KM-s3 is the most demonstrative  
2 evidence of lack of a correlation. This data set encompasses revenues from December 2006  
3 through June 2014 and the corresponding bad debts from June 2006 through December 2014.

4 A perfect correlation would be a straight line from 2006 through 2014. This would  
5 mean that for each month bad debt is the same percentage to revenues. I would expect a  
6 general correlation would be depicted as data points either somewhat above or below a  
7 straight line. What is actually depicted in the graph is neither a perfect nor a general  
8 correlation. In fact, after the 2006 and 2007 rate cases, bad debt as compared to revenues  
9 *decreased* from March 2008 through December 2009. This runs opposite to the assumption  
10 that bad debts automatically increase with a rate increase. After a steady increasing trend  
11 from January 2010 through June 2011, the bad debt percentage began a downward trend.

12 Q. What is the bad debt percentage now compared to the data in the 2012  
13 rate case?

14 A. Staff's direct filed bad debt write-off in the 2012 Rate Case was 0.9156%<sup>5</sup>,  
15 using bad debts as of the 12 months ending March 31, 2012. In current case, the percentage  
16 is \*\* \_\_\_\_ \*\*. Actual historical data shows that bad debts as a percentage of revenues  
17 has *decreased* since rates were *increased* effective January 26, 2013. This evidence refutes  
18 the assumption that bad debts should be increased by any rate increase granted by  
19 the Commission.

20 Q. Please summarize your surrebuttal testimony concerning the bad debt  
21 factor up.

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<sup>5</sup> Surrebuttal Testimony of John P. Weisensee, Case No. ER-2012-0174.

1           A.     Staff recommends the Commission deny KCPL's request to include an  
2 additional level of bad debt expense related to any revenue increase ordered in this case. Staff  
3 provided evidence, based on KCPL's own historical Missouri retail revenues and bad debt  
4 expense, which confirm there is no correlation between increased revenues and bad debt  
5 expense. Based on Staff's analysis of retail revenues and bad debt expense for the period of  
6 2000-2005, which is the period of years prior to any KCPL rate cases, and for the period of  
7 2006-2011, which is the period of years subsequent to KCPL rate cases, Staff concluded that  
8 the relationship of increased revenues and bad debts are not proportionally related nor exhibit  
9 any meaningful correlation. In other words, even though KCPL has increased its rates five  
10 times since 2006, the relationship between increased revenues and bad debt expense was the  
11 same prior to 2006 when no revenue increase existed as a result of a rate case. Therefore,  
12 KCPL's assumption that bad debts will increase dollar for dollar with additional revenue  
13 ordered in this case is simply not true.

14           In the event that the Commission does grant KCPL's request to factor-up bad  
15 debt expense proportionate with the revenue requirement, Staff recommends to also  
16 reflect additional forfeited discounts (late payment fees) that will increase as a result of  
17 the rate increase.

18     **ADMINISTRATIVE AND GENERAL (A&G) EXPENSES**

19           Q.     What analysis of KCPL's A&G expenses did Staff perform as part of its direct  
20 cost of service report?

21           A.     Staff obtained the FERC Form 1 reports for calendar years 2009 through 2013.  
22 These forms are detailed standardized reports listing the operating results by FERC account  
23 according to the USOA. Staff's initial analysis compared KCPL's A&G expenses with those

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1 of Ameren Missouri, Empire, GMO, Westar, and KCPL and GMO on a combined company  
2 basis. This is the same analysis completed by Staff in the 2010 and 2012 KCPL and GMO  
3 rate cases.

4 In this case, Staff has expanded the A&G analysis to include the peer group utilities  
5 used to determine GPE executive compensation.

6 Q. Have you updated the A&G analysis for 2014 data?

7 A. Yes. The results are generally the same as the 2013 analysis. KCPL still has  
8 the highest A&G cost per customer, third highest A&G cost per MWh sold<sup>6</sup>, and highest  
9 A&G cost per dollar of revenue. KCPL has the highest A&G expense compared to its total  
10 operations and maintenance (“O&M”) expense. On all four metrics, KCPL is higher than  
11 Westar and Ameren Missouri, both of which also own nuclear generation.

12 The results are shown below, and attached as Schedule KM-s4:

13 **1. 2014 A&G Expenses per Customer**

Calendar Year 2014	Empire	Ameren Missouri	Westar	GMO	<b>KCPL</b>	Combined KCPL and GMO
A&G Expenses	\$45,640,013	278,701,237	107,569,267	74,615,056	<b>161,898,178</b>	236,513,234
Average Number of Customers	168,553	1,200,005	374,502	316,593	<b>518,988</b>	835,581
A&G Cost per Customer	\$ 270.78	\$ 232.25	\$ 287.23	\$ 235.68	<b>\$ 311.95 Highest</b>	\$ 283.05

14  
15  
16  
17  
18 *continued on next page*

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<sup>6</sup> Behind GMO and Empire.

**2014 A&G Expenses per Megawatt Hour Sold**

Calendar Year 2014	Empire	Ameren Missouri	Westar	GMO	KCPL	Combined KCPL and GMO
A&G Expenses	45,640,013	278,701,237	107,569,267	74,615,056	161,898,178	236,513,234
Megawatt Hours Sold	5,131,750	43,192,724	18,531,716	8,511,766	22,472,307	30,984,073
A&G Cost per Megawatt Hour Sold	\$ 8.89	\$ 6.45	\$ 5.80	\$ 8.77	\$ 7.20	\$ 7.63

**2014 A&G Expenses per Electric Operating Revenue**

Calendar Year 2014	Empire	Ameren Missouri	Westar	GMO	KCPL	Combined KCPL and GMO
A&G Expenses	45,640,013	278,701,237	107,569,267	74,615,056	161,898,178	236,513,234
Total Electric Operating Revenues	590,428,386	3,393,525,753	1,475,410,196	850,066,625	1,730,764,278	2,580,830,903
A&G Cost Per Electric Revenue Dollar	\$ 0.0773	\$ 0.0821	\$ 0.0729	\$ 0.0878	\$ 0.0935 Highest	\$ 0.0916

**2014 A&G Compared to Total O&M Expense**

Calendar Year 2014	Empire	Ameren Missouri	Westar	GMO	KCPL	Combined KCPL and GMO
A&G Expenses	45,640,013	278,701,237	107,569,267	74,615,056	161,898,178	236,513,234
Total O&M	363,252,937	1,859,500,297	839,234,676	520,213,138	1,001,292,788	1,521,505,926
A&G as a % of Total O&M	12.56%	14.99%	12.82%	14.34%	16.17% Highest	15.54%

*continued on next page*

**Six Year Analysis of FERC Form 1 A&G Expenses**

<b>A&amp;G Expenses per Customer</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Empire	\$ 170.09	\$ 194.16	\$ 222.05	\$ 251.10	\$ 265.94	\$270.78
Ameren Missouri	\$ 211.03	\$ 201.85	\$ 231.17	\$ 198.47	\$ 210.39	\$232.25
Westar	\$ 223.55	\$ 252.38	\$ 255.06	\$ 265.45	\$ 261.95	\$287.23
GMO	\$ 214.65	\$ 198.10	\$ 225.46	\$ 240.43	\$ 236.67	\$235.68
<b>KCPL</b>	<b>\$ 278.43</b>	<b>\$ 298.54</b>	<b>\$ 339.18</b>	<b>\$ 298.63</b>	<b>\$ 302.53</b>	<b>\$311.95</b>
Combined KCPL & GMO	\$ 254.23	\$ 260.45	\$ 296.07	\$ 276.55	\$ 277.54	\$283.05

<b>A&amp;G Cost per Megawatt Hour Sold</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Empire	\$5.28	\$5.46	\$6.35	\$7.47	\$7.95	\$8.89
Ameren Missouri	\$5.11	\$4.98	\$5.72	\$5.38	\$5.84	\$6.45
Westar	\$4.76	\$5.17	\$5.38	\$5.79	\$5.59	\$5.80
GMO	\$8.26	\$7.02	\$8.27	\$8.99	\$8.86	\$8.77
<b>KCPL</b>	<b>\$7.08</b>	<b>\$7.10</b>	<b>\$8.53</b>	<b>\$6.97</b>	<b>\$7.18</b>	<b>\$7.20</b>
Combined KCPL and GMO	\$7.42	\$7.07	\$8.45	\$7.53	\$7.65	\$7.63

<b>A&amp;G Cost Per Dollar of Electric Revenue</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Empire	\$0.0660	\$0.0678	\$0.0706	\$0.0825	\$0.0837	\$0.0773
Ameren Missouri	\$0.0926	\$0.0793	\$0.0853	\$0.0757	\$0.0743	\$0.0821
Westar	\$0.0768	\$0.0772	\$0.0759	\$0.0754	\$0.0718	\$0.0729
GMO	\$0.1035	\$0.0838	\$0.0928	\$0.0992	\$0.0931	\$0.0878
<b>KCPL</b>	<b>\$0.1079</b>	<b>\$0.1007</b>	<b>\$0.1115</b>	<b>\$0.0969</b>	<b>\$0.0932</b>	<b>\$0.0935</b>
Combined KCPL and GMO	\$0.1064	\$0.0952	\$0.1054	\$0.0977	\$0.0932	\$0.0916

<b>A&amp;G Expenses Compared to Total Operations &amp; Maintenance Expense</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Empire	10.31%	10.66%	11.54%	13.82%	14.40%	12.56%
Ameren MO	15.65%	14.17%	14.66%	14.93%	13.56%	14.99%
Westar	11.97%	12.80%	12.91%	13.27%	12.54%	12.82%
GMO	14.84%	13.14%	14.50%	17.13%	16.42%	14.34%
<b>KCPL</b>	<b>19.41%</b>	<b>19.08%</b>	<b>19.42%</b>	<b>17.17%</b>	<b>16.39%</b>	<b>16.17%</b>
Combined KCPL & GMO	17.67%	16.88%	17.69%	17.16%	16.40%	15.54%

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1 The results are similar to those detailed in my direct testimony in Staff's cost of service  
2 report.

3 Q. On page 3 of KCPL witness Bresette's rebuttal testimony, he claims that the  
4 use of FERC Form 1 data is "absolutely not" appropriate for A&G comparisons among  
5 utilities. He further states on page 10 that Staff's A&G comparison should be disregarded.  
6 How do you respond?

7 A. On the contrary, two KCPL witnesses used or use the same type of analysis  
8 Staff uses in this case. In KCPL's Acquisition Case, William J. Kemp filed Supplemental  
9 Direct testimony on August 8, 2007, in which he testified on page 18:

10 **Q: What types of synergy data from other utility**  
11 **transaction can be compared with KCPL's**  
12 **estimates?**

13 A. Essentially two types of synergy data are  
14 available from other utility transactions.

15 \* \* \* \*

16 Realized synergies are the actual reductions in real costs  
17 (or merger-related increases in revenue) that are  
18 achieved by the merged company. **Data on realized**  
19 **synergies are most reliably and consistently obtained**  
20 **from utilities' annual filings to FERC on their actual**  
21 **costs of utility operations (FERC Forms 1 and 2).**  
22 These data must be reviewed carefully, as organizational  
23 changes, changes in operating models, one-time events  
24 (large storms or extreme weather), changes in  
25 accounting methods, changes in industry structure, and  
26 subsequent M&A transactions can distort the filed costs.  
27 (emphasis added)

28 Q. How did KCPL witness Kemp analyze the FERC Form 1 data?

29 A. In much the same way Staff has in this case, as described in his testimony on  
30 page 19:

1                   **Q:     How do KCPL's estimated synergies compare**  
2                   **with realized synergies from other utility merger**  
3                   **transactions?**

4                   A.     ...Since the FERC data set on post-transaction  
5                   costs has functional detail, it enables comparisons of  
6                   synergies at the functional level. **I compared inflation-**  
7                   **adjusted cost changes for** the categories of Generation  
8                   Non-Fuel O&M, Transmission O&M, Distribution  
9                   O&M, Customer Service, Sales, and **Administrative**  
10                  **and General.** (emphasis added)

11                  Staff's analysis uses the same data KCPL's own witness used. In fact, one of the reasons  
12                  Staff introduced the A&G comparison in the 2010 Rate Case was to validate the very  
13                  synergies KCPL claimed were being flowed to customers, because the Commission adopted  
14                  KCPL's witness' testimony in its Acquisition Case Report and Order:

15                                 239. The Commission further adopts Mr. Kemp's  
16                                 prefiled testimony in its totality as findings of fact (with  
17                                 the exclusion of the irrelevant materials identified in  
18                                 Finding of Fact Numbers 236), but his testimony will  
19                                 also be considered in depth in another portion of this  
20                                 order and additional specific findings regarding his  
21                                 testimony will be made in relation to his testimony at  
22                                 that time. (footnote omitted)

23                  Q.     Why does witness Bresette now disregard this analysis?

24                  A.     Witness Bresette gives various reasons why the A&G analysis is invalid, all of  
25                  which were conspicuously absent when KCPL witness Kemp presented his FERC Form 1  
26                  analysis. Most of Mr. Bresette's reasons are irrelevant. I assume KCPL is now attempting to  
27                  distance itself from Mr. Kemp's analysis because it shows KCPL has some of the highest  
28                  A&G expenses as compared to adjacent electric utilities. While KCPL witness Kemp sold  
29                  this analysis to the Commission to justify acquiring Aquila, it now abandons it Mr. Kemp's  
30                  testimony as a matter of convenience.

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1 Q. Witness Bresette states on page 3 of his rebuttal testimony that not every cost  
2 is recorded to the same FERC account among utilities and that utilities engage in different  
3 activities. How do you respond?

4 A. The FERC USOA provides detailed, sufficiently rigid guidelines for how  
5 electric utilities account for all items of expense, revenue, and investment. Staff's analysis  
6 identified accounts 920 through 935, all of which are located in the category "Administrative  
7 and General Expenses" on page 323 of every FERC Form 1. Staff used a high level analysis  
8 to avoid the very problems witness Bresette alleges exist. In general, the costs in these  
9 accounts are comparable among utilities.

10 As to unique costs related to nuclear generation, Staff's analysis shows that KCPL's  
11 A&G expenses are comparatively higher than Ameren Missouri and Westar<sup>7</sup>, both by  
12 significant amounts. Witness Bresette does not provide a reason why KCPL does not have  
13 lower A&G than at least one other nuclear owning utility. This fact lies in contrast to all the  
14 claimed synergies KCPL has realized from the acquisition of Aquila and that KCPL witness  
15 Kemp projected in the Acquisition Case.

16 Q. Is there a KCPL witness in the current rate case that supports a FERC Form 1  
17 analysis in any respect?

18 A. Yes. KCPL witness Wm. Edward Blunk used a FERC Form 1 analysis in his  
19 support for KCPL's Fuel Adjustment Clause (FAC) request:

20 [U]sing SNL's database of publicly available **FERC Form**  
21 **1 data**, I calculated net energy costs as the sum of  
22 expenses charged to Accounts 501, 509, 518, 547, 555,  
23 561.4, 561.8, 565, and 575.7, less the revenues recorded in  
24 Accounts 447 and 456.1.  
25 [Blunk Rebuttal, page 21, lines 15-18, Case No.  
26 ER-2014-0370] (emphasis added)

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<sup>7</sup> Ameren Missouri owns Callaway, the sister unit to Wolf Creek, and Westar owns 47% of Wolf Creek.



1 Witness Blunk testifies that FERC Form 1 data comparisons are common in the electric utility  
2 industry:

3 **Q: Do others use the FERC Form 1 data for**  
4 **comparing utilities' fuel and power costs?**

5 A: Yes. For example, it was a component of a study  
6 regarding electric utility automatic adjustment clauses  
7 prepared for Edison Electric Institute by the Brattle  
8 Group.

9 [Blunk Rebuttal, page 21, lines 15-18, Case No.  
10 ER-2014-0370] (footnote omitted)

11 Q. How do you explain KCPL's contradictory approach to FERC Form 1 data?

12 A. Apparently, using FERC Form 1 data to compare expenses between utilities is  
13 acceptable to SNL Financial<sup>8</sup>, the Edison Electric Institute, the Brattle Group<sup>9</sup>, KCPL  
14 witness Blunk, and KCPL witness Kemp. Mr. Bresette is the only witness, KCPL or  
15 otherwise, who cannot support using FERC Form 1 data for a meaningful comparison. I  
16 assume witness Bresette cannot support the comparison because it is not favorable to KCPL.

17 Q. Witness Bresette identifies a 2004 Missouri Gas Energy ("MGE") case in  
18 which the Commission rejected a comparison of gas utilities based on FERC data. How do  
19 you respond?

20 A. The operations and maintenance ("O&M") expense analysis rejected by the  
21 Commission is separate and distinct from Staff's A&G analysis in this proceeding.

22 An O&M analysis for electric utilities would not be particularly useful because of the  
23 difficulty of matching a utility's generation profile, service territory, and load mix to other  
24 utilities. For example, Empire and GMO rely more on gas generation than KCPL and Westar,

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<sup>8</sup> SNL Financial is an online database used by KCPL witness Blunk and KCPL witness Hevert.

<sup>9</sup> "The Brattle Group answers complex economic, regulatory, and financial questions for corporations, law firms, and governments around the world." [Source: [www.brattle.com/about](http://www.brattle.com/about)]. To Staff's knowledge, KCPL has retained The Brattle Group for various services within the last five years.

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1 and consequently would have substantially different fuel and maintenance expenses that  
2 would be reflected in O&M expense, but not A&G expense. KCPL has more urban service  
3 territory than Empire, and consequently would have different distribution maintenance  
4 expense that would also be reflected in O&M expense, but not A&G expense. Comparing  
5 O&M expense on a per customer, per MWh sold, and per dollar of operating revenue basis  
6 would likely not be a meaningful comparison.

7         Conversely, A&G expenses are the costs not directly associated with generating,  
8 transmitting, or delivering power to customers. Staff's A&G analysis is not unduly impacted  
9 by differences in generation profile, service territory, and load mix, with the exception of the  
10 impact of nuclear generation. Staff's analysis shows that KCPL has a higher comparative  
11 A&G expense than Ameren Missouri and Westar both of which have nuclear generation.

12         Staff's analysis does not compare the actual absolute A&G expenses between the  
13 utilities; obviously, Empire would be much smaller than KCPL or Ameren. By using an  
14 average cost per customer, per MWh sold, and per revenue dollar, Staff's analysis measures  
15 the overall A&G expense efficiency.

16         Q         Witness Bresette identifies on page 5 of his rebuttal testimony that KCPL  
17 participated in a "benchmarking study." What are the problems with relying on KCPL's  
18 "benchmarking study"?

19         A.         There are several. The 292-page study results provided by KCPL are  
20 essentially a collection of bar charts with no identification of the utilities involved in the study  
21 as anonymity of the participants and their results relative to each other was part of the  
22 agreement regarding participating in the study. KCPL supposedly is not able to identify the  
23 members of the study, two of which are publicly owned, and seven of which own and operate

1 gas distribution assets. KCPL is investor owned and only owns electric assets. Staff does not  
2 have access to the “data collection and entry, data validation, reporting results and knowledge  
3 sharing sessions” described by witness Bresette. KCPL cannot produce any actual results  
4 of the utility comparisons that would refute Staff’s A&G analysis and its conclusions.  
5 The Commission should give little if any weight to KCPL’s “benchmarking study.”

6 Q. How does Staff’s FERC Form 1 analysis avoid these problems?

7 A. The data used is readily accessible and does not rely on a third party to provide  
8 an analysis. KCPL’s analysis relies on data from two publicly owned utilities. To address  
9 witness Bresette’s earlier point, different utilities have different costs. Publicly owned  
10 utilities would not incur expenses for equity issuances, rate case expense, SEC registration, or  
11 annual external audit fees.

12 KCPL’s analysis relies on data from seven utilities that own gas distribution assets.  
13 Ameren Missouri and Empire own gas distribution assets, but none of those expenses would  
14 be included in the FERC Form 1 data in Staff’s analysis<sup>10</sup>. There is no meaningful  
15 comparison of KCPL’s A&G expenses to, for example, the A&G expenses of Laclede or  
16 Missouri Gas Energy. Staff focused its study on Missouri electric utilities and Westar for its  
17 analysis, with the additional analysis of KCPL’s peer utilities.

18 Q. On page 7, Witness Bresette alleges Staff excluded pension expense in its  
19 A&G analysis. How do you respond?

20 A. Staff did include pension expense in its calculation; FERC account 926 –  
21 Employee Pensions and Benefits was included in the total A&G costs. I have attached  
22 Page 323 from the 2014 FERC Form 1 that shows this account was included as

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<sup>10</sup> Gas utilities file FERC Form 2, which would include allocated A&G expenses.

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1 Schedule KM-s5. The 2014 FERC Form 1 shows data from 2013, which was also included in  
2 Staff's analysis. Pension expense is 45%<sup>11</sup> of KCPL's A&G expenses; it would make no  
3 sense to exclude pension expense from the analysis. I am not sure how Mr. Bresette came to  
4 this conclusion.

5 Q. On page 9, Witness Bresette claims that amortizations of regulatory assets and  
6 liabilities are outside KCPL's control, and thus their inclusion disrupt the analysis. How do  
7 you respond?

8 A. On the contrary, amortization of regulatory assets and liabilities are most  
9 commonly authorized by the Commission at the request of the utility. I would agree that once  
10 the Commission orders certain treatment of an item, a utility is obligated to correctly record  
11 the amortization expense. KCPL has complete discretion concerning what alternative  
12 regulatory treatment it requests, if any.

13 Whatever differences Witness Bresette alleges are caused by these amortizations  
14 would have a minimal impact on the A&G analysis. The solar rebates regulatory asset is  
15 amortized to FERC Account 910<sup>12</sup>, which is not included in Staff's analysis. The SO<sub>2</sub>  
16 allowances regulatory liability is amortized to FERC Account 509, also not included in  
17 Staff's analysis. Of the \$155 million in A&G expenses, \$112 million, or 71% is comprised  
18 of two accounts; 920 – Administrative and General Salaries and 926 - Employee Pensions  
19 and Benefits.

20 Q. On page 10, Witness Bresette claims that lack of an FAC distorts the revenue  
21 comparisons. How do you respond?

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<sup>11</sup> Direct filed analysis using 2013 data – Account 926 - \$69,852,014 out of \$155,757,596 total A&G expense.  
Updated analysis using 2014 data – Account 926 - \$76,625,030 out of \$161,898,178 total A&G expense.

<sup>12</sup> Source – Page 232.3 2014 FERC Form 1.

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1           A.     The 2013 FERC Form 1 data reflected 11 months of the rate increase granted  
2 on January 26, 2013. KCPL has the ability to increase its revenues for higher fuel and  
3 purchased power costs by filing a general rate case.

4           KCPL does have fuel expense rate adjustment mechanism in its Kansas jurisdiction  
5 which is about 45% of its utility business<sup>13</sup>.

6           Q.     You have referenced an expanded A&G analysis based on KCPL's peer  
7 utilities. Describe Staff's analysis.

8           A.     Staff expanded its analysis by obtaining FERC Form 1 data from the  
9 companies in the peer group used by KCPL to determine executive compensation.

10          The methodology used by KCPL to select the peer group is described in the GPE  
11 proxy statement dated March 26, 2015. Peer utilities as determined by KCPL have a similar  
12 size and business mix using three criteria: annual revenues, market value, and percentage of  
13 total revenues from regulated electric operations. The companies are shown in the table  
14 below:

15  
16  
17  
18  
19  
20  
21  
22

*continued on next page*

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<sup>13</sup> On a KCPL basis. Kansas is about 30% of GPE's utility business.

1

Alliant Energy Corporation
Avista Corporation
Black Hills Corporation
Cleco Corporation
IdaCorp, Inc.
OGE Energy Corporation
Pinnacle West Capital Corporation
PNM Resources, Inc.
Portland General Electric Company
TECO Energy Inc.
UNS Energy Corporation
Westar Energy, Inc.
Wisconsin Energy Corporation

2

Staff obtained the FERC Form 1<sup>14</sup> for each company listed for years 2013 and 2014. Staff compared the results to KCPL, GMO, and combined KCPL and GMO. I have attached the detailed calculations as Schedule KM-s6. The summary results of that comparison are shown below:

3

4

5

**2013 and 2014 A&G Per Customer**

<b>Peer Company</b>	<b>2013 A&amp;G per Customer</b>	<b>2013 Ranking</b>	<b>2014 A&amp;G per Customer</b>	<b>2014 Ranking</b>
Alliant	\$176	14	\$181	13
Avista	\$176	13	\$185	12
Black Hills	\$298	3	\$289	3
Cleco	\$190	10	\$201	9
GMO	\$237	7	\$236	7
IdaCorp	\$299	2	\$305	2
<b>KCPL</b>	<b>\$303</b>	<b>1</b>	<b>\$312</b>	<b>1</b>
KCPL & GMO	\$278	4	\$283	5
OGE	\$139	16	\$146	16
Pinnacle	\$186	12	\$165	14
PNM	\$266	5	\$257	6
Portland	\$189	11	\$192	10
TECO	\$209	8	\$187	11
UNS	\$209	9	\$221	8
Westar	\$262	6	\$287	4
Wisconsin	\$172	15	\$147	15

6

<sup>14</sup> From the FERC eLibrary online repository, [www.ferc.gov](http://www.ferc.gov).

1

**2013 and 2014 A&G Per Megawatt Hour**

2

Peer Company	2013 A&G per MWh	2013 Ranking	2014 A&G per MWh	2014 Ranking
Alliant	\$5.44	13	\$5.71	12
Avista	\$4.81	15	\$5.29	13
Black Hills	\$8.98	3	\$9.11	3
Cleco	\$4.87	14	\$2.60	16
GMO	\$8.86	4	\$8.77	4
IdaCorp	\$9.26	2	\$9.56	2
<b>KCPL</b>	<b>\$7.18</b>	<b>8</b>	<b>\$7.20</b>	<b>8</b>
KCPL & GMO	\$7.65	6	\$7.63	6
OGE	\$3.91	16	\$3.91	15
Pinnacle	\$6.66	10	\$5.83	10
PNM	\$11.26	1	\$11.09	1
Portland	\$7.43	7	\$7.67	5
TECO	\$7.79	5	\$7.03	9
UNS	\$6.87	9	\$7.33	7
Westar	\$5.59	12	\$5.80	11
Wisconsin	\$5.95	11	\$5.03	14

3

4

**2013 and 2014 A&G Per Dollar of Revenue**

Peer Company	2013 A&G per Revenue	2013 Ranking	2014 A&G per Revenue	2014 Ranking
Alliant	\$0.0637	11	\$ 0.0653	11
Avista	\$0.0610	13	\$ 0.0669	10
Black Hills	\$0.0954	3	\$ 0.0897	5
Cleco	\$0.0494	15	\$ 0.0453	16
GMO	\$0.0931	6	\$ 0.0878	6
IdaCorp	\$0.1216	1	\$ 0.1220	1
<b>KCPL</b>	<b>\$0.0932</b>	<b>4</b>	<b>\$ 0.0935</b>	<b>3</b>
KCPL & GMO	\$0.0932	5	\$ 0.0916	4
OGE	\$0.0468	16	\$ 0.0459	15
Pinnacle	\$0.0613	12	\$ 0.0545	13
PNM	\$0.1211	2	\$ 0.1150	2
Portland	\$0.0855	7	\$ 0.0840	7
TECO	\$0.0749	9	\$ 0.0651	12
UNS	\$0.0750	8	\$ 0.0759	8
Westar	\$0.0718	10	\$ 0.0729	9
Wisconsin	\$0.0584	14	\$ 0.0486	14

5

**2013 and 2014 A&G Compared to Total O&M Expense**

Peer Company	2013 A&G / O&M	2013 Ranking	2014 A&G / O&M	2014 Ranking
Alliant	9.20%	13	9.51%	12
Avista	9.36%	12	10.69%	11
Black Hills	14.36%	6	13.46%	6
Cleco	8.91%	14	7.33%	14
GMO	16.42%	3	14.34%	5
IdaCorp	19.39%	1	18.38%	1
<b>KCPL</b>	<b>16.39%</b>	<b>5</b>	<b>16.17%</b>	<b>2</b>
KCPL & GMO	16.40%	4	15.54%	4
OGE	7.39%	16	7.09%	15
Pinnacle	10.45%	11	9.12%	13
PNM	17.25%	2	16.14%	3
Portland	12.80%	7	13.24%	7
TECO	12.51%	9	10.93%	10
UNS	10.90%	10	11.28%	9
Westar	12.54%	8	12.82%	8
Wisconsin	7.91%	15	6.70%	16

To summarize, below is a table of KCPL’s rankings compared to the peer group:

Category	KCPL 2013 Ranking	KCPL 2014 Ranking
A&G Per Customer	1 (Highest)	1 (Highest)
A&G Per MWh Sold	8	8
A&G Per Dollar of Revenue	4	3
A&G Compared to Total O&M	5	2

Staff’s expanded study shows that KCPL has some of the highest A&G expenses of its national peers as well as Missouri electric utilities.

**RATE CASE EXPENSE**

Q. What is KCPL’s recommendation regarding rate case expense?

A. KCPL requests a three year amortization of current rate case expenses. At the time of KCPL’s direct filing, KCPL projected \$1,362,261 of Missouri jurisdictional rate case expenses, or \$454,087 per year. KCPL also requests an amortization over three years of



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1 prior rate case expenses related 2010 Rate Case expense, an additional \$264,262 per year.  
2 KCPL witnesses Klote and Ives address rate case expense in their direct and rebuttal  
3 testimonies, respectively.

4 Q. What is Staff's recommendation regarding rate case expense?

5 A. Staff recommends a 50/50 "sharing" of reasonable and prudent rate case  
6 expenses incurred in relation to this case between shareholders and ratepayers. This amount  
7 should be normalized over three years; 1/3 of the amount determined should be included in  
8 the cost of service. Staff recommends a five year recovery period for the cost of KCPL's  
9 depreciation study offered in this case. Staff recommends no additional recovery of  
10 amortized rate case expense incurred in the 2010 Rate Case. As of March 31, 2015, KCPL  
11 incurred \$371,396 of Missouri rate case expense. After Staff's adjustments described later in  
12 this testimony, the normalized level of rate case expenses is \$49,937 as of March 31, 2015.  
13 Staff recommends updating actual rate case expense through the filing of briefs.

14 It should be noted that rate case expenses are the *incremental* expenses to complete  
15 KCPL's rate case. They do not include payroll and benefits of KCPL employees that charge  
16 time to rate case expense. Of the 13 (thirteen) KCPL witnesses who filed direct revenue  
17 requirement testimony, witnesses Spanos, Hevert, and Rogers represent incremental rate case  
18 expenses; of the 14 (fourteen) KCPL witnesses that filed rebuttal testimony, witnesses  
19 Spanos, Hevert, and Overcast represent incremental rate case expenses. KCPL also incurs  
20 incremental legal, printing and binding, and support expense in processing its rate case.

21 Q. On page 18 of his rebuttal testimony, witness Ives supports KCPL's inclusion  
22 of amortized 2012 rate case expenses. How do you respond?

1           A.     KCPL's recommendation would violate the *Second Non-Unanimous*  
2 *Stipulation and Agreement as to Certain Issues* filed in the 2012 Rate Case and approved by  
3 the Commission. Paragraph 4 of that stipulation addresses rate case expense:

4                           4.     **Resolution of Specific Issues:**

5                           B.     Rate Case Expense: The revenue requirement set  
6 forth in Paragraph 1 resolves the rate case expense issue  
7 for this case regarding recovery of rate case expense  
8 arising out of this case, Case No. ER-2012-0174. KCPL  
9 agrees that it will not seek in any future rate case to  
10 recover rate case expenses arising out of this case.

11     The language in the stipulation is clear that KCPL will not seek to recover 2012 rate case  
12 expenses in any future rate case.

13           Q.     Staff has recommended a normalization of rate case expenses, and KCPL has  
14 recommended an amortization of rate case expenses. What is the difference between these  
15 two methods?

16           A.     A normalization adjustment includes a "normal" level of an expense in the cost  
17 of service. Payroll overtime and non-wage maintenance are examples of normalization  
18 adjustments. The cost of service is based on an ongoing level of an expense and there is no  
19 "tracking" of future amounts, less than or greater than the amount in the cost of service  
20 for future recovery. The majority of the expenses in the cost of service are not subject to  
21 any tracking.

22           An amortization adjustment identifies a certain expense and includes recovery of that  
23 expense over a fixed period of time. An amortization adjustment with a fixed time period  
24 explicitly (or implicitly) dictates that expense will be amortized until it is fully recovered.  
25 Construction accounting for Iatan 1 and Iatan 2 and the amortization of 2011 Missouri River  
26 flood expenses are examples of amortization adjustments. Because amortizations are a

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1 departure from traditional ratemaking, they can be subject to recognition of over or under-  
2 collections. Tracker mechanisms, such as KCPL's pension and OPEB trackers are similar to  
3 amortizations; tracker mechanisms are an ongoing amortization and tracking of expenses with  
4 the ultimate goal of perfectly matching an expense with the amount in rates for that expense.

5 Q. What are the problems with KCPL's "defer and amortize" approach of  
6 recovery of rate case expense?

7 A. Under the defer and amortize method, the utility defers (to a Missouri-only rate  
8 case expense account) all expenses related to prosecuting a rate case. The Company defers  
9 expenses such as legal fees, consulting fees, copying and binding expenses, temporary labor  
10 expenses and other administrative expenses that would otherwise be charged to expense. This  
11 method is problematic because there is virtually no incentive to contain costs if rate recovery  
12 is certain.

13 Q. On page 18, witness Ives characterizes Staff's rate case expense sharing  
14 mechanism as "an arbitrary disallowance". How do you respond?

15 A. A more accurate description would be a fair allocation of rate case expenses to  
16 the parties that benefit from rate case expense. The rate case process benefits both the  
17 ratepayer, who is provided safe and adequate service, and the shareholder, who is provided  
18 the opportunity for a reasonable return.

19 Q. On page 21, witness Ives states "rate case expenses are no different from other  
20 costs that provide benefits to customers". How do you respond?

21 A. Rate case expenses are distinct from other costs that provide benefits to  
22 customers (i.e. generation, transmission and delivery services). Rate case expenses are highly

1 discretionary. A utility has broad discretion on concerning the outside witnesses used and  
2 how to process its rate filing.

3 Q. What other expenses are usually allocated to shareholders?

4 A. These expenses are typically removed from the cost of service, or booked to  
5 non-utility accounts (“below the line”):

- 6 • Incentive compensation tied to earnings per share (EPS)
- 7 • Charitable donations
- 8 • Some dues, such as duplicative chambers of commerce dues
- 9 • Political lobbying expenses
- 10 • Board of directors retreat expenses
- 11 • Certain executive expenses
- 12 • ½ of the funds dedicated to the Economic Relief Pilot Program

13 There are certain costs that by their very nature, while undisputedly prudent from the  
14 Company’s perspective, should nonetheless be assigned to shareholders as opposed to  
15 customers. These expenses are obviously not related to the provision of safe and adequate  
16 utility service and are appropriately not recovered in rates. Staff does make the distinction of  
17 rate case expense from the above costs in the 50/50 share of these expenses because there is a  
18 benefit to both shareholders and ratepayers.

19 While KCPL does not recover shareholder allocated costs in the cost of service, it  
20 certainly has not prevented KCPL from spending money on these items.

21 Q. On page 22, Witness Ives references Commissioner Jarrett’s opinion on rate  
22 case expense in the 2010 rate case. What is your response?

23 A. First, Commissioner Jarrett’s concurring opinion must be taken in context.  
24 At the time of the 2010 rate case, KCPL incurred an incredible amount of rate case expense,  
25 most of which was related to the completion of Iatan 2. KCPL incurred \$7.7 million<sup>15</sup> in rate

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<sup>15</sup> Including amounts for the GMO rate case ER-2010-0356.

1 case expense through the true-up in that case, which did not include \$4.1 million<sup>16</sup> after  
2 the true-up period in that case related to hearings and briefs. In total, KCPL incurred  
3 \$11.9 million<sup>17</sup> of rate case expense, to Staff's knowledge the highest in Commission history.

4 Second, KCPL filed a rate case in its Kansas jurisdiction in the same general time  
5 frame as the 2010 Missouri rate case. Kansas rate case expenses are separate from Missouri  
6 rate case expenses. With the \$7.6 million in Kansas rate case expense combined with the  
7 \$11.9 million of Missouri rate case expense, KCPL spent \$19.5 million on its 2010 Missouri  
8 and Kansas rate cases. The Kansas Corporation Commission (KCC) convened an additional  
9 administrative proceeding on rate case expense. I have attached the *Order on Rate Case*  
10 *Expense* from the KCC as Schedule KM-s7 concerning several disallowances of 2010 Kansas  
11 rate case expenses, including concurring opinions of then KCC Chairman Mark Sievers.

12 Q. Why should the Commission consider relevant an order from the KCC  
13 concerning rate case expense?

14 A. In the 2010 rate case and in many concurrent rate cases, KCPL uses some of  
15 the same external witnesses, incurs some of the same rate case expenses, and litigates some of  
16 the same issues in both jurisdictions. The KCC order provides context for the \$19.5 million  
17 in rate case expenses, which by any measurement was excessive. Chairman Sievers provides  
18 an interesting and relevant economic analysis of the rate case process and rate case expenses.

19 Q. On page 23, Witness Ives claims "much of the rate case expenses are driven by  
20 the quantity and complexity of the issues that are raised by other parties to the case." How do  
21 you respond?

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

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1           A.     I would strongly disagree. KCPL has complete control over the content and  
2 methodologies proposed in its rate cases. KCPL has requested numerous trackers, two of  
3 which have never been requested in Missouri, and two of which were first presented in its  
4 rebuttal testimony in this case:

- 5           • Fuel Adjustment Clause (FAC) – tracker/rate adjustment mechanism
- 6           • Vegetation management tracker
- 7           • Property tax tracker
- 8           • Transmission tracker – requested in rebuttal
- 9           • Cyber Security tracker – KCPL unique tracker
- 10          • Vehicle Charging stations – KCPL unique tracker, suggested as an alternative
- 11           in rebuttal testimony

12         The amount of discovery Staff issues is largely driven by these requested mechanisms.

13           I agree with witness Ives that KCPL has every right to utilize the resources in the  
14 quantity it chooses to process its rate case and to respond to the arguments by other parties.  
15 Staff’s recommendation of a 50/50 sharing of these expenses is a simple allocation of costs to  
16 the parties that share the benefits.

17           Q.     On page 24, witness Ives notes the number of Staff and other parties’ experts  
18 participating in the case. How are their expenses different from those incurred by KCPL?

19           A.     The difference is that none of these expenses, nor are *any* rate case expenses in  
20 most cases ultimately paid by KCPL. Instead, all rate case expenses are presumptively paid  
21 by KCPL’s ratepayers under this Commission’s traditional approach. Members of Staff have  
22 duties far broader than only processing KCPL’s rate filing, and the Commission assessment  
23 paid by KCPL’s ratepayers supports the entirety of duties performed by the Commission and  
24 its Staff. KCPL is the *only* party to its rate case that ultimately does not pay its own way.

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1 Q. On page 27 of his rebuttal testimony, witness Ives alleges that parties who  
2 re-argue issues drive rate case expenses higher, and he gives two examples. What is  
3 your response?

4 A. I will address Mr. Ives' examples. Staff's position on transition costs is solely  
5 addressed by Mr. Ives, who is employed by KCPL, and his full salary and benefits is included  
6 in the cost of service. Staff's position on the La Cygne construction accounting is solely  
7 addressed by Mr. Klote, who is employed by KCPL, and his full salary and benefits in  
8 included in the cost of service. Regardless of the time these witnesses spent on their  
9 testimony, the cost is the same and does not drive rate case expenses. Recovery of deferrals  
10 of La Cygne construction accounting have not been approved by the Commission and this is  
11 the first rate case in which they will be considered; Staff is not "re-arguing" this issue.

12 On the contrary, KCPL has not been reluctant to re-litigate issues it loses. For  
13 example, this is the fourth time KCPL is arguing for a transmission tracker after the  
14 Commission has denied the request every other time<sup>18</sup>. KCPL litigated jurisdictional  
15 allocations in the 2006 rate case and hired an outside consultant in the 2009 and 2010 rate  
16 cases<sup>19</sup> for this issue and is continuing to contest the Commission ordered 4 Coincident Peak  
17 (4CP) demand factor in the current case. KCPL hired an outside consultant in the 2007 rate  
18 case<sup>20</sup> to address recovery of earnings-based incentive compensation and stock-based  
19 compensation after the Commission ruled against their recovery in rates in the 2006 rate case.

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<sup>18</sup> 1) *Report and Order*, Case Nos. ER-2012-0174 and 0175, 2) *Order Denying Rehearing of Report and Order and Rehearing of Order Approving Compliance Tariffs*, Case Nos. ER-2012-0174 and 0175, and 3) *Report and Order*, Case No. EU-2014-0077.

<sup>19</sup> KCPL witness Larry W. Loos direct, rebuttal, and surrebuttal testimony, ER-2009-0089; direct, rebuttal, and surrebuttal testimony, ER-2010-0355.

<sup>20</sup> KCPL witness Michael Halloran rebuttal testimony, ER-2007-0291.

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1 KCPL also re-argued this issue in the 2009 rate case<sup>21</sup>. Although a GMO-only issue,  
2 Crossroads valuation and recovery of transmission expenses was re-litigated in the 2012 rate  
3 case after the Commission ruled on these issues in the 2010 rate case<sup>22</sup>.

4 Q. KCPL included projected rate case expenses in its direct filed case. Should the  
5 Commission rely on this projection to determine a normalized amount?

6 A. No. Staff recommends the Commission use actual incurred rate case expenses,  
7 before the application of Staff's 50/50 sharing recommendation.

8 Rate case expenses are end-loaded; the majority of the expenses are incurred related to  
9 hearings and briefs which will necessarily be incurred after the true-up cutoff in this case.  
10 Staff recommends consideration of incurred rate case expenses through the filing of briefs in  
11 this case.

12 Q. Does Staff recommend removal of any rate case expenses from the amount  
13 before Staff's sharing mechanism?

14 A. Yes. Staff recommends no recovery from ratepayers of expenses related to  
15 KCPL witness Overcast.

16 Q. Explain your recommended adjustment.

17 A. Witness Overcast's testimony addresses the several tracking mechanisms  
18 requested by KCPL, including the FAC. His testimony is largely duplicative of several KCPL  
19 witnesses including Ives, Hardesty, Blunk, Carlson, Crawford, and Roper. This witness'  
20 expenses are unnecessary incremental rate case expenses. KCPL has incurred \*\* \_\_\_\_\_ \*\*  
21 related to witness Overcast through March 31, 2015. The engagement letter for these witness'  
22 services is attached as Highly Confidential Schedule KM-s8.

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<sup>21</sup> KCPL witness Barbara Curry rebuttal and surrebuttal, ER-2009-0089.

<sup>22</sup> See *Report and Order*, ER-2010-0356 and *Report and Order*, ER-2012-0175.



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1 Q. Why did Staff not recommend this adjustment sooner?

2 A. Witness Overcast filed rebuttal testimony on May 7, 2015. Staff was unaware  
3 KCPL had retained these services before that time.

4 Q. Staff has made no adjustment, notwithstanding the 50/50 sharing, for outside  
5 witnesses Spanos, Rogers, and Hevert. How are they different from witness Overcast?

6 A. These outside witnesses addressed unique issues that were not directly  
7 addressed by other witnesses in the case. Witness Spanos addresses KCPL's depreciation  
8 study. Staff recommends a five-year amortization of depreciation study expenses with no  
9 sharing mechanism. KCPL is required to submit a depreciation study no less frequently than  
10 every five years<sup>23</sup>. Witness Rogers presents a property decommissioning study not addressed  
11 by other KCPL witnesses. Witness Hevert addresses cost of capital, which is also not directly  
12 addressed by other KCPL witnesses.

13 I would note that both KCPL and Staff have witnesses that address some of the same  
14 topics; however, they are not *incremental* rate case expenses, and the cost of both KCPL's  
15 internal witnesses and Staff's witnesses<sup>24</sup> are fully included in the cost of service.

16 Q. Witness Overcast rebuts the testimony of OPC witness Lena M. Mantle and  
17 Midwest Energy Consumers' Group (MECG) Michael Brosch. Should not KCPL be entitled  
18 to rebut these witnesses?

19 A. Absolutely, but not at the ratepayer's expense. Both witnesses Mantle and  
20 Brosch are funded by their respective parties. As I explained in Staff's cost of service report,  
21 KCPL is the only party in the rate case process that is not required to pay its own way.

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<sup>23</sup> Commission Rule 4 CSR 240-3.160.

<sup>24</sup> Through the PSC Assessment.

1 **ACCUMULATED DEFERRED INCOME TAXES (ADIT) ON**  
2 **CONSTRUCTION WORK IN PROGRESS (CWIP)**

3 Q. On pages 3-4 of witness Melissa Hardesty's rebuttal testimony, she notes that  
4 KCPL generated a net operating loss (NOL), and that KCPL receives no cash tax benefit  
5 related to the ADIT. How do you respond?

6 A. Witness Hardesty omits that KCPL is receiving fully normalized cash income  
7 taxes in the cost of service. Regardless of whether or not the income taxes are actually  
8 remitted to the IRS, normalization treatment dictates that the significant tax benefits realized  
9 through accelerated tax depreciation are not immediately flowed through to ratepayers.  
10 Ratepayers do receive the benefit of the accelerated depreciation through ADIT – a cost-free  
11 source of capital which reduces rate base.

12 AFUDC is an accounting entry that increases non-cash income during the construction  
13 period of an asset. AFUDC follows a formula and is calculated based on the actual cost of  
14 debt and equity in a given time period but is not tied to actual cash payments. The formula  
15 does not account for the income tax impact of ADIT. KCPL records an ADIT liability based  
16 on the AFUDC recorded in a given period. Because ADIT is not considered in the calculation  
17 of AFUDC the benefit must be accounted for elsewhere; consequently it must be considered  
18 as an offset to rate base.

19 Q. On page 5, witness Hardesty attempts to distinguish KCPL's tax environment  
20 from Ameren Missouri's by the existence of NOLs. How do you respond?

21 A. The Commission recently decided this issue in Case No. ER-2012-0166. Like  
22 Ameren ratepayers, KCPL ratepayers provide fully normalized income taxes in the cost of  
23 service regardless of the actual amount paid to the IRS. Ms. Hardesty seems to argue that  
24 KCPL is not realizing all the benefits of accelerated depreciation due to a NOL position

1 invalidates the fact that ratepayers are providing several million dollars in cash income taxes.  
2 The Commission correctly decided this issue in Case No ER-2012-0166 recognizing income  
3 taxes ratepayers provide in the cost of service.

4 Q. What is Staff's recommendation concerning the ADIT liability related  
5 to CWIP?

6 A. Staff recommends these amounts be used to offset, or reduce rate base similar  
7 to other ADIT net liabilities.

8 **WOLF CREEK OTHER POST-EMPLOYMENT BENEFITS (OPEBS)**

9 Q. On pages 21-22 of his rebuttal testimony witness Klote discusses KCPL's  
10 funding requirements for OPEBs. Does KCPL have direct control over the Wolf Creek  
11 OPEB plan?

12 A. No. Wolf Creek Nuclear Operating Company (WCNOC) and KCPL are  
13 separate and distinct companies. WCNOC is owned by three separate companies: KCPL  
14 (47 percent ownership share), Kansas Gas and Electric, a Westar Energy Company  
15 (47 percent) and Kansas Electric Power Cooperative (6 percent). WCNOC manages the  
16 nuclear Wolf Creek Generating Station for its owners, who share its energy in proportion to  
17 their ownership interest.

18 Q. At page 11 of his rebuttal testimony, Mr. Klote states that Section 386.315  
19 RSMo requires amounts collected in rates be funded to an independent external funding  
20 mechanism. Do you believe the payments to WCNOC qualify under this statute?

21 A. No. In order to use amounts calculated pursuant to GAAP as codified by  
22 FASB in Accounting Standards Codification 715, formerly referred to as Statement of  
23 Financial Accounting Standards No. 106 ("FAS 106") for ratemaking purposes,

Surrebuttal Testimony of  
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1 Section 386.315 RSMo includes a funding requirement as a prerequisite. The recognition of  
2 FAS 106 for ratemaking purposes is conditioned on a requirement that annual FAS 106 costs  
3 collected in rates be funded in a separate funding mechanism to be used solely for the  
4 payment of OPEB benefit costs to retirees. Paragraph 2 of Section 386.315 addresses the  
5 funding requirement:

6 2. A public utility which uses Financial Accounting  
7 Standard 106 shall be required to use an independent  
8 external funding mechanism that restricts disbursements  
9 only for qualified retiree benefits. In no event shall any  
10 funds remaining in such funding mechanism revert to  
11 the utility after all qualified benefits have been paid;  
12 rather, the funding mechanism shall include terms which  
13 require all funds to be used for employee or retiree  
14 benefits. This section shall not in any manner be  
15 construed to limit the authority of the commission to set  
16 rates for any service rendered or to be rendered that are  
17 just and reasonable pursuant to sections 392.240,  
18 393.140 and 393.150.

19 Q. On page 21 of his rebuttal testimony, witness Klote interprets Section 386.315  
20 RSMo as not requiring FAS 106 funding by individual plan. Do you agree?

21 A. No. I agree that the statute does not explicitly state that the funding  
22 requirement is not plan specific. The disagreement is based on the fact that KCPL believes it  
23 is appropriate to “skim” the excess dollars collected in rates designated to compensate  
24 WCNOC retirees for their medical costs and put these dollars in a fund restricted solely for  
25 the benefit of KCPL employees and retirees. The Staff asserts that this action is inappropriate  
26 and the Commission should not allow KCPL to continue with this action.

27 Q. Please continue.

28 A. Section 386.315 RSMo requires a public utility which uses FAS 106 to use an  
29 independent external funding mechanism that restricts disbursements only for qualified retiree

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1 benefits. The FAS 106 expense was solely calculated on actuarial data about  
2 specific WCNOE employees and designed to predict future payments to these specific current  
3 WCNOE employees. To read this requirement as authorizing KCPL take an expense based  
4 on WCNOE employees and to put these dollars in a fund that is restricted to pay only KCPL  
5 employees and retirees future OPEB expenses is illogical. KCPL employees are not WCNOE  
6 employees, and vice versa.

7 Q. Is the “pay-as-you-go” ratemaking methodology for retiree OPEB expense a  
8 legitimate method?

9 A. Yes it is. This method was the standard approach used prior to the  
10 implementation of the FAS 106 actuarial method. The annual expense is based on the cash  
11 OPEB benefit dollars paid to retirees as opposed to an accrual basis designed to estimate what  
12 future benefit levels will be based on the personal characteristics of the specific employees  
13 covered under the plan.

14 Prior to FAS 106, most employers accounted for postretirement benefits on a pay-as-  
15 you-go (cash) basis. As the prevalence and magnitude of employers' promises to provide  
16 those benefits have increased, there has been increased concern about the failure of financial  
17 reporting to identify the financial effects of those promises.

18 Q. Why is it inappropriate for KCPL to contribute amounts collected in rates for  
19 WCNOE OPEBs into KCPL employee OPEBs trust funds?

20 A. The calculation of FAS 106 is based on employee specific data such as age,  
21 sex, marital status and employee-specific assumptions such as retirement dates, mortality, etc.  
22 When a FAS 106 calculation for WCNOE is done, it is done with the intent to determine how  
23 much WCNOE will have to pay current WCNOE employees for medical benefits when these

1 employees retire. These WCNOF employee-specific costs have nothing at all to do with  
2 KCPL and KCPL employees. These WCNOF FAS 106 costs should not accrue to the benefit  
3 of KCPL employees by KCPL management putting the excess dollars collected in rates from  
4 Missouri ratepayers into a KCPL employee fund.

5 In the text of FAS 106 on page 4<sup>25</sup>, the FASB describes the basis of FAS 106  
6 as follows:

7 This Statement requires that an employer's obligation for  
8 postretirement benefits expected to be provided to or for  
9 an employee be fully accrued by the date that employee  
10 attains full eligibility for all of the benefits expected to  
11 be received by that employee, any beneficiaries, and  
12 covered dependents (the full eligibility date), even if the  
13 employee is expected to render additional service  
14 beyond that date.

15 That accounting reflects the fact that at the full  
16 eligibility date the employee has provided all of the  
17 service necessary to earn the right to receive all of the  
18 benefits that employee is expected to receive under the  
19 plan.

20 The beginning of the attribution (accrual) period is the  
21 employee's date of hire unless the plan only grants credit  
22 for service from a later date, in which case benefits are  
23 generally attributed from the beginning of that credited  
24 service period.

25 An equal amount of the expected postretirement benefit  
26 obligation is attributed to each year of service in the  
27 attribution period unless the plan attributes a  
28 disproportionate share of the expected benefits to  
29 employees' early years of service.

30 Q. What are some of the employee-specific criteria used by the WCNOF's  
31 actuary to determine the employee-specific FAS 106 cost?

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<sup>25</sup> SFAS 106, Page FAS106-4, [www.fasb.org](http://www.fasb.org).

1           A.     According to WCNOC's Actuarial Report, the WCNOC employee-specific  
2 FAS 106 expense includes the following employee assumptions:

- 3                     Average employee age
- 4                     Average credited service
- 5                     Average future working life
- 6                     Age of surviving spouses
- 7                     Number of dependents
- 8                     Dependents average age
- 9                     Percent married

10           Q.     Did the FASB make it explicitly clear that the calculation of FAS 106 OPEB  
11 expense was an employee-specific form of employee compensation?

12           A.     Yes. FASB stated that a FAS 106 postretirement benefit plan between a certain  
13 employer and its employees is the same as a deferred compensation arrangement or an  
14 employer-employee contract:

15                     The Board concluded that, like accounting for other  
16 deferred compensation agreements, accounting for  
17 postretirement benefits should reflect the explicit or  
18 implicit contract between the employer and its  
19 employees.<sup>26</sup>

20                     The Board views a postretirement benefit plan as a  
21 deferred compensation arrangement whereby an  
22 employer promises to exchange future benefits for  
23 employees' current services. Because the obligation to  
24 provide benefits arises as employees render the services  
25 necessary to earn the benefits pursuant to the terms of  
26 the plan, the Board believes that the cost of providing  
27 the benefits should be recognized over those employee  
28 service periods.<sup>27</sup>

29           Q.     Why is the Staff's recommendation superior to KCPL's concerning WCNOC  
30 OPEB expense?

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<sup>26</sup> Ibid.

<sup>27</sup> SFAS 106, Page FAS106-7, [www.fasb.org](http://www.fasb.org).

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1           A.     The Staff method provides in rates the actual dollar amount that KCPL has  
2 to pay WCNOC for KCPL's share of WCNOC retiree OPEB expense. With the exception  
3 of pension and decommissioning expense, all other WCNOC operations and maintenance  
4 and compensation costs of which I am aware are paid by KCPL to WCNOC on a cash or  
5 pay-as-you-go basis. The Staff's proposal puts WCNOC OPEB expense, which is not funded  
6 on a FAS 106 accrual, on the same basis as all other expenses that are not funded to an  
7 external trust. This Staff's method is a reasonable, logical, and consistent method to account  
8 for WCNOC's OPEB expense for ratemaking purposes.

9           Q.     What is Staff's recommendation regarding the Wolf Creek OPEBs?

10          A.     Staff recommends the actual payments to WCNOC should be reflected in the  
11 cost of service. KCPL does not contribute the amount calculated under FAS 106 for  
12 Wolf Creek OPEBs to an external trust fund. Therefore the amount included in the cost of  
13 service should not be the FAS 106 amount, but should be the actual amount paid to WCNOC  
14 for this expense by KCPL.

15     **VEHICLE CHARGING STATIONS**

16          Q.     What Staff witnesses provide surrebuttal testimony concerning the Clean  
17 Charge Network?

18          A.     Myself, and Staff witnesses Byron Murray and Michael Stahlman in their  
19 respective surrebuttal testimonies. Michael Stahlman clarifies some confusion about Staff's  
20 proposal and identifies issues with the lack of information and analysis that call into question  
21 the likely success of the Clean Charge Network as proposed. Byron Murray discusses the  
22 impacts of the Clean Charge Network on the environment and the nascent market for charging



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1 stations. I address the rebuttal testimony of witness Ives by addressing the costs of the Clean  
2 Charge Network from an accounting perspective.

3 Q. KCPL's witness Ives addresses its Clean Charge Network of electric vehicle  
4 charging stations at pages 38 to 49 of his rebuttal testimony. Who is KCPL proposing pay for  
5 the costs of these stations?

6 A. KCPL is requesting that its retail customers and GMO's retail customers  
7 subsidize the costs relating to those few customers who operate electric vehicles. KCPL's  
8 witness Ives filed supplemental direct and rebuttal testimony supporting this position.

9 Q. What is Staff's recommendation?

10 A. Staff opposes KCPL's efforts to saddle its customers with unnecessary  
11 expenses for something that will not directly benefit the vast majority of them now and not in  
12 the immediate future. KCPL is requesting to shift the substantial risk that the adoption of  
13 electric vehicles will come if it builds the Clean Charge Network, and the related costs to  
14 provide this isolated service to very few of its customers. In fact, apparently the risks are  
15 so great that KCPL does not want to incur the costs on its own without approved recovery  
16 of these costs in rates. This service is not unlike several other ventures KCPL is  
17 currently engaged in to provide services to its electric customers on a "below-the-line,"  
18 non-regulated basis.

19 Q. What are some of the "other ventures KCPL is currently engaged in"?

20 A. KCPL offers electric surge protection to customers to protect electronic  
21 equipment from electricity surges that could damage any electronic equipment. KCPL also  
22 provides to customers a service that allows customers to use contractors to make home  
23 repairs. KCPL has an arrangement with a third party, Allconnect, which KCPL considers a

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1 regulated activity to verify information provided by new customers or customers transferring  
2 within the KCPL or GMO service area and to provide a confirmation number for the  
3 establishment of service. Allconnect also solicits KCPL-GMO customers to purchase phone,  
4 wireless, cable and satellite TV, internet access, and home security products and services. All  
5 of these aforementioned services are provided to KCPL's customers on a non-regulated basis.  
6 If KCPL wants to offer the charging station as a service it should do so on a non-regulated  
7 basis. The expenses for this service should not be charged to KCPL's customers and,  
8 therefore, should be treated as a below-the-line item.

9 Q. What are the costs for the charging stations that KCPL is seeking to recover  
10 from its retail customers in this case?

11 A. KCPL has requested a significant dollar investment be included in rate base for  
12 all charging stations in service as of the true-up date of May 31, 2015; witness Ives expects  
13 this amount to be in the range of \$7 to \$9 million. KCPL's estimate of the total completed  
14 Missouri and Kansas investment is \$20 million, with annual operating cost for KCPL of  
15 \$385,947. Adjustment CS-49 described in the direct testimony of witness Klote addresses the  
16 operating expenses.

17 Q. Mr. Ives states at page 42 of his rebuttal testimony, "There is no difference in  
18 the provision of service; the difference is with the traditional view of a "customer." What is  
19 Staffs' response to how KCPL is saying it views the electric vehicle customers?

20 A. Mr. Ives attempts to justify KCPL's position by using an example of KCPL  
21 providing electric service "...to fixed load, usually a building of some sort" (page 42 of Ives  
22 rebuttal). Mr. Ives further states "the end-uses within the buildings have changed dramatically  
23 over time, but from the Company's perspective the load is still a building." However, it isn't

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1 the building that is being served but it is what is being done in the building that drives the  
2 usage. What activities are taking place in the building is what is critical to KCPL in  
3 designing, planning and maintaining electric service for its customers. Usage is considered in  
4 what fixed charges are paid by those taking service in the building, home, office, manufacture  
5 plant, etc. While KCPL may invest plant and equipment according to what service is being  
6 provided, each served customer class is expected to pay for that service which supports that  
7 customer classes, usage (load).

8 KCPL's request for the charging stations is not as Mr. Ives describes how KCPL  
9 serves its typical customers at all. Mr. Ives in his zealous effort to defend KCPL's proposal is  
10 confusing how costs are assigned to the various customer classes. Those costs are based on  
11 an assignment of why the costs were incurred. Customers should pay for the costs the utility  
12 incurs to serve them. In every other instance, it is expected that each customer and customer  
13 class pay for the costs the utility incurs to serve them. Not so with KCPL's proposal for the  
14 charging stations. With it, those who charge their electric vehicles at the charging stations  
15 will not contributing to paying for the costs of those stations commensurate with the benefit  
16 they obtain from the stations. Mr. Ives admits this in his rebuttal testimony when he states  
17 that all KCPL customers will have to pay all the costs for those who use the stations just so  
18 the charging stations can be installed and maintained. Further, according to Mr. Ives,  
19 those who use the charging station will receive free electricity for this purpose for a  
20 two-year period.

21 Q. What is the effect on KCPL's customer base of how it proposes to recover the  
22 cost of the charging stations?

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1           A.     Mr. Ives identifies at page 40 of his rebuttal testimony an estimated annual cost  
2 impact of \$1.79 per customer for the charging stations, representing a 15 cents per month  
3 charge from every customer. To the overwhelming number of KCPL's customers who will  
4 not use these charging stations, this would be an unfair treatment.

5           Q.     Has Staff included the investment costs or the operating costs of the  
6 Clean Charge Network in KCPL's Missouri service area in its calculation of KCPL's cost  
7 of service?

8           A.     No. Staff has excluded any costs relating to the charging stations in its revenue  
9 requirement determination. The charging station costs should be paid for by those who  
10 benefit from this service and who are causing the costs—the cost causers.

11          Q.     Is KCPL's proposal consistent with allocation methodologies used in the  
12 ratemaking process?

13          A.     No. Cost allocation methods are derived by assigning or allocating costs for  
14 any service to customers who benefit from those services. Or, to say it another way, costs are  
15 assigned and allocated based on those who caused the costs.

16          Q.     Mr. Ives testifies at page 46 of his rebuttal testimony, "The Company believes  
17 growth in the purchase and use of electric vehicles is a forgone conclusion." If KCPL is  
18 correct, then should the costs for the charging stations be included in KCPL's cost of service  
19 in this rate case?

20          A.     No, it should not be included in KCPL's cost of service. If growth of electric  
21 vehicles is going to occur regardless of actions taken by KCPL at the expense of its  
22 customers, there isn't any reason to adopt KCPL's approach for reimbursing it for its  
23 investment in the Clean Charge Network.

1 Q. Did anyone testify at any of the local public hearings in this case about  
2 KCPL's Clean Charge Network?

3 A. Yes. Several customers testifying at the local public hearings expressed  
4 concern about the prospect of those who do not presently own or will not own electric cars  
5 in the future paying for those charging stations in their KCPL utility bills, including a  
6 customer who testified at the local public hearing held April 23, 2015, in Kansas City,  
7 Missouri, as follows:

8 I understand you all are talking about a rate increase. If  
9 you're on a fixed income, it's going to hurt. If you live  
10 in some of the older apartments that are located in the  
11 City, it's going to doubly hurt because the rates are  
12 going to go up and you're not going to be able to take  
13 advantage of any other protections to the rate hike.

14 You say you have 1,000 people that can get the \$50  
15 help, but you have how many thousands of customers?  
16 It sounds like you might have about [*sic*] percent of your  
17 customers that get assistance. And how many of those  
18 are the ones in the inner city, where we live?

19 **We don't drive electric cars. Why should we pay for**  
20 **the stations, the charging stations? Let the people**  
21 **that can go out and buy the new cars pay for their**  
22 **charging stations. Yes, I know it would help the air,**  
23 **but we don't have that option where we live. So that**  
24 **does not help us.**

25 [Source: April 23, 2015 Local Public Hearing,  
26 Volume 3, Transcript pp. 33-34; emphasis added]

27 Another KCPL customer testified at the Gladstone, Missouri Local Public Hearing on  
28 May 6, 2015 also opposing KCPL's proposal relating to the charging stations:

29 ...Then, I want to talk about this electric vehicle parking  
30 [*sic*] station. I got livid at that. I go by Antioch  
31 Shopping Center and Walgreen's has got an electric  
32 charging station there, and in all the years, I've been  
33 heading up there at least three or four years, never has  
34 anybody parked and been there, never once, and then

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1 they want to charge the retail customers for these  
2 charging stations.

3 Tell you a little story about a drunken sailor went into a  
4 beer joint and he says, “When I drink, everybody  
5 drinks.” The day he says, “When I pay, everybody  
6 pays.” So the whole thing is, **if you use it, you pay for**  
7 **it; if we don’t use it, why should we pay for it?**

8 [Source: May 6, 2015 Local Public Hearing, Volume 8,  
9 Transcript pp. 17; emphasis added]<sup>28</sup>

10 Many of the customers KCPL wants to charge for this service cannot afford to buy electric  
11 vehicles and cannot take advantage of this service.

12 KCPL is asking its customers to pay for the costs for a service that virtually a small  
13 number of customers could even remotely benefit. Customers who own electric cars must pay  
14 for all the costs to set up the infrastructure to charge those electric vehicles. Those having  
15 cars fueled by gasoline and natural gas have to pay all costs for those vehicles fuel  
16 distribution network. The charging stations are no different. KCPL customers who make a  
17 decision to drive electric vehicles must be willing to pay for the costs to establish a network of  
18 charging stations. If KCPL wants to encourage this new service, the Company and its owners  
19 should be willing to pay all the costs to establish the network.

20 Q. Does Staff have any response to Mr. Ives’ rebuttal testimony on page 48, after  
21 acknowledging there is no history of operations and maintenance expenses for the Clean  
22 Charge Network, “As a protection to including an estimate of O&M expense in rates, KCP&L  
23 suggests that a reasonable alternative would be for the Commission to order tracker treatment  
24 for O&M expenses related to the CCN pilot”?

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<sup>28</sup> Coincidentally, Staff observed the charging station at this very location. It appeared to have been installed for some time and was currently not in use.

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1           A.     Yes. KCPL states at page 48 of Ives rebuttal "...KCP&L is proceeding with  
2 the installation of charging stations under the [clean charge network] pilot and there can be no  
3 doubt that some level of operating and maintenance ("O&M") expense will be required."  
4 KCPL made a business decision to move ahead with this very unusual and unique electric  
5 service without any discussion among regulators and customers alike. The fact that KCPL  
6 has incurred actual costs for these charging stations should in no way influence the  
7 Commission to allow this proposal. KCPL made the decision to incur these costs and it  
8 should do so at its own risk, not shifting the risk to customers.

9           Staff does not support tracker treatment of the Clean Charge Network expenses. Use  
10 of trackers may be justified under the following circumstances: (1) when the applicable costs  
11 demonstrate significant fluctuation and up-and-down volatility over time, and for which  
12 accurate estimation is difficult; (2) new costs for which there is little or no historical  
13 experience, and for which accurate estimation is accordingly difficult; and (3) costs imposed  
14 upon utilities by Commission rule. In addition, the costs should be material in nature. Staff  
15 witness Mark L. Oligschlaeger discusses trackers in depth in this rebuttal testimony.

16           Q.     Mr. Ives testifies in his rebuttal testimony "that KCP&L does not believe that  
17 KCP&L is providing a 'subsidy' to customers owning electric vehicles." Then he testifies,  
18 "The program is based upon tariff rates which are approved by the Commission and recover  
19 the cost of providing the service." Does Staff agree?

20           A.     No. Mr. Ives himself shows this subsidy when he states, "[KCPL] has  
21 estimated the bill impact for a typical Residential KCP&L-MO customer to be about  
22 \$1.79 per year, or about 15 cents per month." If KCPL was collecting the costs of the Clean  
23 Charge Network from those who use it, then there would be no estimated bill impact to a

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1 typical residential customer on that rate schedule who does not own or use an electric vehicle.  
2 That customers who do not benefit from the service are paying for it is the classic definition  
3 of a subsidy.

4 If the Clean Charge Network did not exist, private individuals who own electric  
5 vehicles or who install vehicle chargers for use by others would invest in the charging  
6 equipment. KCPL's proposed subsidy provides a significant benefit to owners of electric  
7 vehicles by removing the up-front expense of a vehicle charger.

8 Q. Does that conclude your surrebuttal testimony?

9 A. Yes.



**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 a General Rate Increase for Electric )  
Service )

Case No. ER-2014-0370

**AFFIDAVIT**

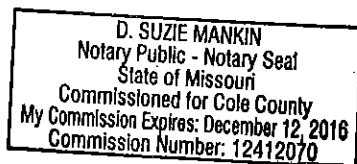
COMES NOW Keith Majors and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached Surrebuttal Testimony; and that the same is true and correct according to his best knowledge and belief.


Further the Affiant sayeth not.

  
Keith Majors

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 4<sup>th</sup> day of June, 2015.



  
Notary Public

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of )  
Kansas City Power & Light Company for )  
the Issuance of an Order Authorizing Construction ) Case No. EU-2014-0255  
Accounting Relating to its Electrical Operations )

**SECOND NON-UNANIMOUS STIPULATION AND AGREEMENT**

COMES NOW Kansas City Power & Light Company (“KCP&L” or “Company”) and the Staff of the Missouri Public Service Commission (“Staff”)(collectively, the “Signatories”) and hereby respectfully submits this *Second Non-Unanimous Stipulation and Agreement* (“*Agreement*”) in complete replacement of the *Non-Unanimous Stipulation and Agreement* filed herein on December 12, 2014 to the Missouri Public Service Commission (“Commission”).

**Introduction**

1. KCP&L initiated this proceeding by the filing of an *Application* on June 12, 2014 along with accompanying direct testimony. Intervention has been granted to the Midwest Energy Consumers Group (“MECG”) and the Midwest Industrial Energy Consumers (“MIEC”). Following the Commission’s adoption of a procedural schedule, Staff filed rebuttal testimony on November 12, 2014, and KCP&L and the Office of the Public Counsel (“Public Counsel) filed surrebuttal testimony on December 10, 2014. An evidentiary hearing is currently scheduled for December 17 and 18, 2014.

2. KCP&L and Staff, often but not always with other parties present, have had numerous discussions regarding possible settlement of this matter, the most recent of which occurred on December 10, 2014. As a result of those settlement discussions, KCP&L and Staff have reached the agreements set forth below.

### Agreement

3. In exchange for KCP&L's agreement expressed in paragraph 4 hereof, Staff withdraws its opposition of and proposed conditions to the Company's request for construction accounting authority for its La Cygne Environmental Project. Also in exchange for KCP&L's agreement expressed in paragraph 4 hereof, in the event this matter goes to hearing, Staff agrees not to oppose the Commission's issuance of an order granting KCP&L construction accounting authority substantially consistent with paragraph 5 hereof.

4. In exchange for Staff's agreement expressed in paragraph 3 hereof, and upon finality and non-appealability of a Commission order granting KCP&L's request for construction accounting authority for the La Cygne Environmental Project substantially consistent with paragraph 5 hereof, KCP&L agrees to file the attached *Joint Motion for Consolidation* of Case No. EU-2015-0094 (Staff's request for an accounting authority order regarding Department of Energy fees no longer paid by KCP&L) with Case No. ER-2014-0370 (KCP&L's pending general rate case) subject to the terms and conditions expressed in that *Motion for Consolidation*.

5. The Commission order granting KCP&L's request for construction accounting authority called for in paragraph 4 hereof shall:

- a. Authorize KCP&L to continue using construction accounting for the La Cygne Environmental Project for the period of time between when the Project becomes operational and when rate recovery begins for the associated costs;
- b. Authorize KCP&L to defer and record as a regulatory asset 1) depreciation expense that would otherwise be recorded on the Company's income

statement when the La Cygne Environmental Project becomes operational, and 2) carrying costs (equivalent of AFUDC recorded during construction work in progress in the last month before La Cygne Unit 2 and common become operational) that would otherwise cease to be recorded when the La Cygne Environmental Project becomes operational;

- c. Provide that 1) the base La Cygne Environmental Project costs on which carrying costs are calculated for deferral purposes shall not increase after the amount determined at the true-up in Case No. ER-2014-0370, and 2) no additional deferrals shall be recorded for the La Cygne Environmental Project after the effective date of rates in Case No. ER-2014-0370;
- d. Provide that any ratemaking determinations regarding the La Cygne Environmental Project construction accounting deferrals shall be made in Case No. ER-2014-0370; and
- e. Provide that nothing in this *Agreement* or the Commission's order shall limit the arguments (including arguments for offsets to the deferred amounts) any party to Case No. ER-2014-370 may make to contest ratemaking treatment of all, or any part, of the amounts KCP&L defers by construction accounting for the La Cygne Environmental Project.

### **General Provisions**

6. This *Agreement* is being entered into solely for the purpose of settling the issues in this case explicitly set forth above. Unless otherwise explicitly provided herein, none of the Signatories shall be deemed to have approved or acquiesced in any accounting, ratemaking or procedural principle, including, without limitation, any accounting methodology, cost of service

methodology or determination, method of cost determination or cost allocation or revenue-related methodology.

8. This *Agreement* is a negotiated settlement. Except as specified herein, the Signatories shall not be prejudiced, bound by, or in any way affected by the terms of this *Agreement*: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this *Agreement*, or in any way condition its approval of same.

9. This *Agreement* has resulted from extensive negotiations among the Signatories, and the terms hereof are interdependent. If the Commission does not approve this *Agreement* unconditionally and without modification, then this *Agreement* shall be void and no Signatory shall be bound by any of the agreements or provisions hereof.

10. If approved and adopted by the Commission, this *Agreement* shall constitute a binding agreement among the Signatories. The Signatories shall cooperate in defending the validity and enforceability of this *Agreement* and the operation of this *Agreement* according to its terms.

11. If the Commission does not approve this *Agreement* without condition or modification, and notwithstanding the provision herein that it shall become void, (a) neither this *Agreement* nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with Section 536.080 RSMo. or Article V, Section 18 of the Missouri Constitution, and (b) the Signatories shall retain all procedural and due process rights as fully as though this *Agreement* had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this *Agreement* shall become privileged

as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

12. If the Commission accepts the specific terms of this *Agreement* without condition or modification, only as to the matters in this case upon which agreement has been reached as explicitly set forth above, the Signatories each waive: their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo.; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo.; their respective rights to seek rehearing pursuant to Section 386.500 RSMo.; and their respective rights to judicial review pursuant to Section 386.510 RSMo. This waiver applies only to a Commission order approving this *Agreement* without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding nor to any matters upon which agreement has not been reached as explicitly set forth in this *Agreement*.

13. Counsel for KCP&L has apprised counsel for Public Counsel, MECG and MIEC of the contents of this *Agreement* and each has authorized counsel for KCP&L to represent that Public Counsel, MECG and MIEC do not oppose this *Agreement* and do not request a hearing on this *Agreement*.

WHEREFORE, KCP&L and Staff offer this *Second Non-Unanimous Stipulation and Agreement* for the Commission's consideration.

Respectfully submitted,

*/s/ Robert J. Hack*

Robert J. Hack, MBN 36496

Phone: (816) 556-2791

E-mail: [rob.hack@kcpl.com](mailto:rob.hack@kcpl.com)

Roger W. Steiner, MBN 39586  
Phone: (816) 556-2314  
E-mail: [roger.steiner@kcpl.com](mailto:roger.steiner@kcpl.com)  
Kansas City Power & Light Company  
1200 Main – 16<sup>th</sup> Floor  
Kansas City, Missouri 64105  
Fax: (816) 556-2787

ATTORNEYS FOR KANSAS CITY POWER &  
LIGHT COMPANY

/s/ Whitney Payne  
Whitney Payne  
Legal Counsel  
Missouri Bar Number 64078

Attorney for the Staff of the  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
(573)751-8706 (Phone)  
(573)751-9285 (Fax)  
Whitney.Payne@psc.mo.gov

**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 15<sup>th</sup> day of December, 2014, to all parties of record.

/s/ Robert J. Hack  
Robert J. Hack

**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 A General Rate Increase for Electric Service	)	
	)	Case No. ER-2014-0370
	)	
Staff of the Public Service Commission of the State of Missouri	)	
	)	
Petitioner,	)	
v.	)	Case No. EU-2015-0094
	)	
Kansas City Power & Light Company,	)	
	)	
Respondent.	)	

**JOINT MOTION TO CONSOLIDATE CASES**

COMES NOW Kansas City Power & Light Company ("KCP&L" or "Company") and the Staff of the Missouri Public Service Commission ("Commission") ("Staff") and for their Joint Motion to consolidate cases, states:

1. On October 9, 2014, Staff filed a petition in Case No. EU-2015-0094 ("0094 Docket") seeking an order from the Commission directing KCP&L to record a regulatory liability in the amount of \$7,019 per day commencing on May 16, 2014, on account of an allowance currently included in the Company's rates for fees KCP&L is no longer paying to the Department of Energy ("DOE") related to spent nuclear fuel storage.

2. On October 30, 2014, KCP&L filed a general rate case with the Commission, Case No. ER-2014-0370 ("Pending Rate Case").

3. KCP&L and Staff believe that the issues regarding the DOE fees raised in the 0094 Docket can most efficiently be addressed in KCP&L's Pending Rate Case. The issue of whether the Commission should order KCP&L to defer and record a regulatory liability for the



subject DOE fees as well as what, if any, ratemaking treatment should be afforded to deferrals recorded pursuant to such an order are best addressed in KCP&L's Pending Rate Case. The Commission has authority to consolidate pending actions involving related questions of law or fact under 4 CSR 240-2.110(3).

4. KCP&L agrees that it will not assert that deferral or ratemaking treatment of the subject DOE fees for the period May 16 through December 31, 2014, is improper or impermissible due to the fact that the Commission had not issued an order directing deferral of the subject DOE fees prior to the closing of KCP&L's books for calendar year 2014. KCP&L may contest ratemaking treatment of the subject DOE fees on any other grounds.

WHEREFORE, KCP&L and Staff request that the Commission grant this Joint Motion to Consolidate Cases.

Respectfully submitted,

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Robert J. Hack, MBN 36496  
Phone: (816) 556-2791  
E-mail: [rob.hack@kcpl.com](mailto:rob.hack@kcpl.com)  
Roger W. Steiner, MBN 39586  
Phone: (816) 556-2314  
E-mail: [roger.steiner@kcpl.com](mailto:roger.steiner@kcpl.com)  
Kansas City Power & Light Company  
1200 Main – 16<sup>th</sup> Floor  
Kansas City, Missouri 64105  
Fax: (816) 556-2787

ATTORNEYS FOR KANSAS CITY POWER &  
LIGHT COMPANY

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Nathan Williams , MBN 35512  
Deputy Staff Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City MO 65102-0360  
Telephone: (573) 751-8702

Facsimile: (573) 751-9285

E-mail: [nathan.williams@psc.mo.gov](mailto:nathan.williams@psc.mo.gov)

STAFF OF THE MISSOURI PUBLIC SERVICE  
COMMISSION

**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 XX<sup>th</sup> day of December, 2014, to all parties of record.

*/s/ Robert J. Hack* \_\_\_\_\_  
Robert J. Hack

**SCHEDULE KM-s2**

**HAS BEEN DEEMED**

**HIGHLY CONFIDENTIAL**

**IN ITS ENTIRETY**

**SCHEDULE KM-s3**

**HAS BEEN DEEMED**

**HIGHLY CONFIDENTIAL**

**IN ITS ENTIRETY**

2014 Utility FERC Form 1 A&G Analysis

**A&G Expenses per Average Customer**

Calendar Year 2014	Empire	Ameren			GMO	KCPL	Combined	
		Missouri	Westar				KCPL and GMO	Source
A&G Expenses	45,640,013	278,701,237	107,569,267	74,615,056	161,898,178	236,513,234	Page 323, line 197	
Average Number of Customers	168,553	1,200,005	374,502	316,593	518,988	835,581	Page 301, line 14	
A&G Cost per Customer	\$ 270.78	\$ 232.25	\$ 287.23	\$ 235.68	\$ 311.95	\$ 283.05		

**A&G Expenses per Megawatt Hour Sold**

Calendar Year 2014	Empire	Ameren			GMO	KCPL	Combined	
		Missouri	Westar				KCPL and GMO	
A&G Expenses	45,640,013	278,701,237	107,569,267	74,615,056	161,898,178	236,513,234	Page 323, line 197	
Megawatt Hours Sold	5,131,750	43,192,724	18,531,716	8,511,766	22,472,307	30,984,073	page 301, line 14	
A&G Cost per Megawatt Hour Sold	\$ 8.89	\$ 6.45	\$ 5.80	\$ 8.77	\$ 7.20	\$ 7.63		

**A&G Expenses per Electric Operating Revenue**

Calendar Year 2014	Empire	Ameren			GMO	KCPL	Combined	
		Missouri	Westar				KCPL and GMO	
A&G Expenses	45,640,013	278,701,237	107,569,267	74,615,056	161,898,178	236,513,234	Page 323, line 197	
Total Electric Operating Revenues	590,428,386	3,393,525,753	1,475,410,196	850,066,625	1,730,764,278	2,580,830,903	Page 300, line 27	
A&G Cost Per Electric Revenue Dollar	\$ 0.0773	\$ 0.0821	\$ 0.0729	\$ 0.0878	\$ 0.0935	\$ 0.0916		

**A&G Expenses Compared to Total Operations & Maintenance Expense**

Calendar Year 2014	Empire	Ameren			GMO	KCPL	Combined	
		Missouri	Westar				KCPL and GMO	
A&G Expenses	45,640,013	278,701,237	107,569,267	74,615,056	161,898,178	236,513,234	Page 323, line 197	
Total O&M	363,252,937	1,859,500,297	839,234,676	520,213,138	1,001,292,788	1,521,505,926	Page 323, line 198	
A&G as a % of Total O&M	12.56%	14.99%	12.82%	14.34%	16.17%	15.54%		

THIS FILING IS

Item 1:  An Initial (Original) Submission OR  Resubmission No. \_\_\_\_\_

Form 1 Approved  
OMB No.1902-0021  
(Expires 11/30/2016)  
Form 1-F Approved  
OMB No.1902-0029  
(Expires 11/30/2016)  
Form 3-Q Approved  
OMB No.1902-0205  
(Expires 11/30/2016)



# FERC FINANCIAL REPORT

## FERC FORM No. 1: Annual Report of Major Electric Utilities, Licensees and Others and Supplemental Form 3-Q: Quarterly Financial Report

These reports are mandatory under the Federal Power Act, Sections 3, 4(a), 304 and 309, and 18 CFR 141.1 and 141.400. Failure to report may result in criminal fines, civil penalties and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider these reports to be of confidential nature

**Exact Legal Name of Respondent (Company)**

Kansas City Power & Light Company

**Year/Period of Report**

End of 2014/Q4

ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
165	6. CUSTOMER SERVICE AND INFORMATIONAL EXPENSES		
166	Operation		
167	(907) Supervision	51,915	72,437
168	(908) Customer Assistance Expenses	15,080,935	11,208,486
169	(909) Informational and Instructional Expenses	111,018	248,836
170	(910) Miscellaneous Customer Service and Informational Expenses	2,308,756	2,129,470
171	TOTAL Customer Service and Information Expenses (Total 167 thru 170)	17,552,624	13,659,229
172	7. SALES EXPENSES		
173	Operation		
174	(911) Supervision		3
175	(912) Demonstrating and Selling Expenses	403,340	358,973
176	(913) Advertising Expenses		
177	(916) Miscellaneous Sales Expenses		63,560
178	TOTAL Sales Expenses (Enter Total of lines 174 thru 177)	403,340	422,536
179	8. ADMINISTRATIVE AND GENERAL EXPENSES		
180	Operation		
181	(920) Administrative and General Salaries	39,419,210	42,272,388
182	(921) Office Supplies and Expenses	-46,241	-1,381,907
183	(Less) (922) Administrative Expenses Transferred-Credit	6,198,182	4,666,954
184	(923) Outside Services Employed	14,928,001	12,449,443
185	(924) Property Insurance	4,484,045	4,619,477
186	(925) Injuries and Damages	10,103,124	7,214,674
187	(926) Employee Pensions and Benefits	76,625,030	69,852,014
188	(927) Franchise Requirements		
189	(928) Regulatory Commission Expenses	8,046,627	9,210,096
190	(929) (Less) Duplicate Charges-Cr.		12,687
191	(930.1) General Advertising Expenses	276	22,273
192	(930.2) Miscellaneous General Expenses	5,404,714	5,584,432
193	(931) Rents	3,165,984	4,919,098
194	TOTAL Operation (Enter Total of lines 181 thru 193)	155,932,588	150,082,347
195	Maintenance		
196	(935) Maintenance of General Plant	5,965,590	5,675,249
197	TOTAL Administrative & General Expenses (Total of lines 194 and 196)	161,898,178	155,757,596
198	TOTAL Elec Op and Maint Expns (Total 80,112,131,156,164,171,178,197)	1,001,292,788	950,427,859



## 2013 Peer Utility FERC Form 1 A&G Analysis

### Administrative & General Expenses per Average Customer

Calendar 2013	Alliant	Avista	Black Hills	Cleco	IdaCorp	OGE	Pinnacle	PNM	Portland	TECO	UNS	Westar	Wisconsin	Source
A&G Expenses	174,249,506	64,056,359	60,590,412	54,127,217	151,020,498	111,759,138	213,793,482	135,149,447	157,718,766	145,126,718	104,786,066	97,745,567	193,855,932	Page 323, line 197
Average Number of Customers	990,767	363,312	203,581	284,188	504,653	802,876	1,147,514	508,248	833,170	694,735	502,113	373,151	1,126,890	Page 301, line 14
A&G Cost per Customer	\$ 175.87	\$ 176.31	\$ 297.62	\$ 190.46	\$ 299.26	\$ 139.20	\$ 186.31	\$ 265.91	\$ 189.30	\$ 208.90	\$ 208.69	\$ 261.95	\$ 172.03	

### Administrative & General Expenses per Megawatt Hour Sold

Calendar 2013	Alliant	Avista	Black Hills	Cleco	IdaCorp	OGE	Pinnacle	PNM	Portland	TECO	UNS	Westar	Wisconsin	Source
A&G Expenses	174,249,506	64,056,359	60,590,412	54,127,217	151,020,498	111,759,138	213,793,482	135,149,447	157,718,766	145,126,718	104,786,066	97,745,567	193,855,932	Page 323, line 197
Megawatt Hours Sold	32,056,708	13,318,994	6,748,081	11,115,732	16,302,681	28,578,159	32,087,545	12,001,980	21,226,863	18,639,927	15,255,416	17,484,374	32,555,334	page 301, line 14
A&G Cost per Megawatt Hour Sold	\$ 5.44	\$ 4.81	\$ 8.98	\$ 4.87	\$ 9.26	\$ 3.91	\$ 6.66	\$ 11.26	\$ 7.43	\$ 7.79	\$ 6.87	\$ 5.59	\$ 5.95	

### A&G Expenses per Electric Operating Revenue

Calendar 2013	Alliant	Avista	Black Hills	Cleco	IdaCorp	OGE	Pinnacle	PNM	Portland	TECO	UNS	Westar	Wisconsin	Source
A&G Expenses	174,249,506	64,056,359	60,590,412	54,127,217	151,020,498	111,759,138	213,793,482	135,149,447	157,718,766	145,126,718	104,786,066	97,745,567	193,855,932	Page 323, line 197
Total Electric Operating Revenues	2,734,981,639	1,049,456,902	635,077,523	1,095,822,127	1,242,150,868	2,388,998,192	3,484,980,000	1,116,019,344	1,845,416,891	1,936,621,293	1,397,057,466	1,361,533,261	3,320,546,496	Page 300, line 27
A&G Cost Per Electric Revenue Dollar	\$ 0.06	\$ 0.0610	\$ 0.0954	\$ 0.05	\$ 0.12	\$ 0.05	\$ 0.06	\$ 0.12	\$ 0.09	\$ 0.07	\$ 0.08	\$ 0.0718	\$ 0.06	

### A&G Expenses Compared to O&M

Calendar 2013	Alliant	Avista	Black Hills	Cleco	IdaCorp	OGE	Pinnacle	PNM	Portland	TECO	UNS	Westar	Wisconsin	Source
A&G Expenses	174,249,506	64,056,359	60,590,412	54,127,217	151,020,498	111,759,138	213,793,482	135,149,447	157,718,766	145,126,718	104,786,066	97,745,567	193,855,932	Page 323, line 197
Total O&M	1,893,630,808	684,482,695	422,029,363	607,265,153	778,659,808	1,512,903,158	2,045,932,147	783,283,450	1,232,425,235	1,160,276,368	961,651,746	779,531,805	2,449,254,652	Page 323, line 198
A&G as a % of Total O&M	9.20%	9.36%	14.36%	8.91%	19.39%	7.39%	10.45%	17.25%	12.80%	12.51%	10.90%	12.54%	7.91%	

Notes:  
 Alliant includes Interstate Power and Light Company and Wisconsin Power and Light Company  
 Avista does not include Alaska Electric Light and Power Company Acquired in 2014  
 Black Hills includes Black Hills Power, Cheyenne Light, Fuel, and Power Company, and Colorado Electric Utility Company  
 PNM Resources does not include Texas-New Mexico Power Company, a transmission and distribution utility, which does not file a FERC Form 1

## 2014 Peer Utility FERC Form 1 A&G Analysis

### Administrative & General Expenses per Average Customer

Calendar 2014	Alliant	Avista	Black Hills	Cleco	IdaCorp	OGE	Pinnacle	PNM	Portland	TECO	UNS	Westar	Wisconsin	Source
A&G Expenses	\$ 179,798,812	67,942,567	59,259,971	57,395,376	155,933,199	118,327,028	192,117,559	131,296,360	161,772,278	132,050,638	112,058,917	107,569,267	165,747,560	Page 323, line 197
Average Number of Customers	993,548	367,195	205,213	285,529	511,957	811,219	1,163,134	511,235	841,033	706,160	508,159	374,502	1,130,647	Page 301, line 14
A&G Cost per Customer	\$ 180.97	\$ 185.03	\$ 288.77	\$ 201.01	\$ 304.58	\$ 145.86	\$ 165.17	\$ 256.82	\$ 192.35	\$ 187.00	\$ 220.52	\$ 287.23	\$ 146.60	

### Administrative & General Expenses per Megawatt Hour Sold

Calendar 2014	Alliant	Avista	Black Hills	Cleco	IdaCorp	OGE	Pinnacle	PNM	Portland	TECO	UNS	Westar	Wisconsin	Source
A&G Expenses	179,798,812	67,942,567	59,259,971	57,395,376	155,933,199	118,327,028	192,117,559	131,296,360	161,772,278	132,050,638	112,058,917	107,569,267	165,747,560	Page 323, line 197
Megawatt Hours Sold	31,474,893	12,839,533	6,502,473	22,057,912	16,312,786	30,234,927	32,951,388	11,836,387	21,080,082	18,784,911	15,293,725	18,531,716	32,942,828	page 301, line 14
A&G Cost per Megawatt Hour Sold	\$ 5.71	\$ 5.29	\$ 9.11	\$ 2.60	\$ 9.56	\$ 3.91	\$ 5.83	\$ 11.09	\$ 7.67	\$ 7.03	\$ 7.33	\$ 5.80	\$ 5.03	

### A&G Expenses per Electric Operating Revenue

Calendar 2014	Alliant	Avista	Black Hills	Cleco	IdaCorp	OGE	Pinnacle	PNM	Portland	TECO	UNS	Westar	Wisconsin	Source
A&G Expenses	179,798,812	67,942,567	59,259,971	57,395,376	155,933,199	118,327,028	192,117,559	131,296,360	161,772,278	132,050,638	112,058,917	107,569,267	165,747,560	Page 323, line 197
Total Electric Operating Revenues	2,752,809,712	1,015,103,873	660,758,369	1,268,230,022	1,277,640,977	2,577,622,977	3,522,222,472	1,141,918,217	1,926,578,668	2,029,544,398	1,476,686,143	1,475,410,196	3,412,203,547	Page 300, line 27
A&G Cost Per Electric Revenue Dollar	\$ 0.07	\$ 0.0669	\$ 0.0897	\$ 0.05	\$ 0.1220	\$ 0.0459	\$ 0.0545	\$ 0.1150	\$ 0.0840	\$ 0.0651	\$ 0.0759	\$ 0.0729	\$ 0.0486	

### A&G Expenses Compared to O&M

Calendar 2014	Alliant	Avista	Black Hills	Cleco	IdaCorp	OGE	Pinnacle	PNM	Portland	TECO	UNS	Westar	Wisconsin	Source
A&G Expenses	179,798,812	67,942,567	59,259,971	57,395,376	155,933,199	118,327,028	192,117,559	131,296,360	161,772,278	132,050,638	112,058,917	107,569,267	165,747,560	Page 323, line 197
Total O&M	1,891,581,634	635,399,996	440,255,257	783,064,569	848,564,840	1,669,635,874	2,106,881,390	813,238,363	1,222,248,702	1,208,660,046	993,274,426	839,234,676	2,475,149,690	Page 323, line 198
A&G as a % of Total O&M	9.51%	10.69%	13.46%	7.33%	18.38%	7.09%	9.12%	16.14%	13.24%	10.93%	11.28%	12.82%	6.70%	

Notes:  
 Alliant includes Interstate Power and Light Company and Wisconsin Power and Light Company  
 Avista does not include Alaska Electric Light and Power Company Acquired in 2014  
 Black Hills includes Black Hills Power, Cheyenne Light, Fuel, and Power Company, and Colorado Electric Utility Company  
 PNM Resources does not include Texas-New Mexico Power Company, a transmission and distribution utility, which does not file a FERC Form 1

**FERC Form 1 A&G Analysis  
A&G Per Customer Rankings**

<b>2013 A&amp;G /</b>			<b>2014 A&amp;G /</b>		
<b>Peer Company</b>	<b>Customer</b>	<b>2013 Ranking</b>	<b>Peer Company</b>	<b>Customer</b>	<b>2014 Ranking</b>
KCPL	\$ 303	1	KCPL	\$ 312	1
IdaCorp	\$ 299	2	IdaCorp	\$ 305	2
Black Hills	\$ 298	3	Black Hills	\$ 289	3
KCPL & GMO	\$ 278	4	Westar	\$ 287	4
PNM	\$ 266	5	KCPL & GMO	\$ 283	5
Westar	\$ 262	6	PNM	\$ 257	6
GMO	\$ 237	7	GMO	\$ 236	7
TECO	\$ 209	8	UNS	\$ 221	8
UNS	\$ 209	9	Cleco	\$ 201	9
Cleco	\$ 190	10	Portland	\$ 192	10
Portland	\$ 189	11	TECO	\$ 187	11
Pinnacle	\$ 186	12	Avista	\$ 185	12
Avista	\$ 176	13	Alliant	\$ 181	13
Alliant	\$ 176	14	Pinnacle	\$ 165	14
Wisconsin	\$ 172	15	Wisconsin	\$ 147	15
OGE	\$ 139	16	OGE	\$ 146	16

<b>Peer Company</b>	<b>2013 A&amp;G /</b>		<b>2014 A&amp;G /</b>	
	<b>Customer</b>	<b>2013 Ranking</b>	<b>Customer</b>	<b>2014 Ranking</b>
Alliant	\$ 176	14	\$ 181	13
Avista	\$ 176	13	\$ 185	12
Black Hills	\$ 298	3	\$ 289	3
Cleco	\$ 190	10	\$ 201	9
GMO	\$ 237	7	\$ 236	7
IdaCorp	\$ 299	2	\$ 305	2
KCPL	\$ 303	1	\$ 312	1
KCPL & GMO	\$ 278	4	\$ 283	5
OGE	\$ 139	16	\$ 146	16
Pinnacle	\$ 186	12	\$ 165	14
PNM	\$ 266	5	\$ 257	6
Portland	\$ 189	11	\$ 192	10
TECO	\$ 209	8	\$ 187	11
UNS	\$ 209	9	\$ 221	8
Westar	\$ 262	6	\$ 287	4
Wisconsin	\$ 172	15	\$ 147	15



**FERC Form 1 A&G Analysis  
A&G Per Megawatt Rankings**

Peer Company	2013		Peer Company	2014	
	A&G / MWH	Ranking		A&G / MWH	Ranking
PNM	\$ 11.26	1	PNM	\$ 11.09	1
IdaCorp	\$ 9.26	2	IdaCorp	\$ 9.56	2
Black Hills	\$ 8.98	3	Black Hills	\$ 9.11	3
GMO	\$ 8.86	4	GMO	\$ 8.77	4
TECO	\$ 7.79	5	Portland	\$ 7.67	5
KCPL & GMO	\$ 7.65	6	KCPL & GMO	\$ 7.63	6
Portland	\$ 7.43	7	UNS	\$ 7.33	7
KCPL	\$ 7.18	8	KCPL	\$ 7.20	8
UNS	\$ 6.87	9	TECO	\$ 7.03	9
Pinnacle	\$ 6.66	10	Pinnacle	\$ 5.83	10
Wisconsin	\$ 5.95	11	Westar	\$ 5.80	11
Westar	\$ 5.59	12	Alliant	\$ 5.71	12
Alliant	\$ 5.44	13	Avista	\$ 5.29	13
Cleco	\$ 4.87	14	Wisconsin	\$ 5.03	14
Avista	\$ 4.81	15	OGE	\$ 3.91	15
OGE	\$ 3.91	16	Cleco	\$ 2.60	16

Peer Company	2013		2014	
	A&G / MWH	Ranking	A&G / MWH	Ranking
Alliant	\$ 5.44	13	\$ 5.71	12
Avista	\$ 4.81	15	\$ 5.29	13
Black Hills	\$ 8.98	3	\$ 9.11	3
Cleco	\$ 4.87	14	\$ 2.60	16
GMO	\$ 8.86	4	\$ 8.77	4
IdaCorp	\$ 9.26	2	\$ 9.56	2
KCPL	\$ 7.18	8	\$ 7.20	8
KCPL & GMO	\$ 7.65	6	\$ 7.63	6
OGE	\$ 3.91	16	\$ 3.91	15
Pinnacle	\$ 6.66	10	\$ 5.83	10
PNM	\$ 11.26	1	\$ 11.09	1
Portland	\$ 7.43	7	\$ 7.67	5
TECO	\$ 7.79	5	\$ 7.03	9
UNS	\$ 6.87	9	\$ 7.33	7
Westar	\$ 5.59	12	\$ 5.80	11
Wisconsin	\$ 5.95	11	\$ 5.03	14

**FERC Form 1 A&G Analysis  
A&G Per Revenue Rankings**

<b>Peer Company</b>	<b>2013 A&amp;G / Revenue</b>	<b>2013 Ranking</b>	<b>Peer Company</b>	<b>2014 A&amp;G / Revenue</b>	<b>2014 Ranking</b>
IdaCorp	\$ 0.1216	1	IdaCorp	\$ 0.1220	1
PNM	\$ 0.1211	2	PNM	\$ 0.1150	2
Black Hills	\$ 0.0954	3	KCPL	\$ 0.0935	3
KCPL	\$ 0.0932	4	KCPL & GMO	\$ 0.0916	4
KCPL & GMO	\$ 0.0932	5	Black Hills	\$ 0.0897	5
GMO	\$ 0.0931	6	GMO	\$ 0.0878	6
Portland	\$ 0.0855	7	Portland	\$ 0.0840	7
UNS	\$ 0.0750	8	UNS	\$ 0.0759	8
TECO	\$ 0.0749	9	Westar	\$ 0.0729	9
Westar	\$ 0.0718	10	Avista	\$ 0.0669	10
Alliant	\$ 0.0637	11	Alliant	\$ 0.0653	11
Pinnacle	\$ 0.0613	12	TECO	\$ 0.0651	12
Avista	\$ 0.0610	13	Pinnacle	\$ 0.0545	13
Wisconsin	\$ 0.0584	14	Wisconsin	\$ 0.0486	14
Cleco	\$ 0.0494	15	OGE	\$ 0.0459	15
OGE	\$ 0.0468	16	Cleco	\$ 0.0453	16

<b>Peer Company</b>	<b>2013 A&amp;G / Revenue</b>	<b>2013 Ranking</b>	<b>2014 A&amp;G / Revenue</b>	<b>2014 Ranking</b>
Alliant	\$ 0.0637	11	\$ 0.0653	11
Avista	\$ 0.0610	13	\$ 0.0669	10
Black Hills	\$ 0.0954	3	\$ 0.0897	5
Cleco	\$ 0.0494	15	\$ 0.0453	16
GMO	\$ 0.0931	6	\$ 0.0878	6
IdaCorp	\$ 0.1216	1	\$ 0.1220	1
KCPL	\$ 0.0932	4	\$ 0.0935	3
KCPL & GMO	\$ 0.0932	5	\$ 0.0916	4
OGE	\$ 0.0468	16	\$ 0.0459	15
Pinnacle	\$ 0.0613	12	\$ 0.0545	13
PNM	\$ 0.1211	2	\$ 0.1150	2
Portland	\$ 0.0855	7	\$ 0.0840	7
TECO	\$ 0.0749	9	\$ 0.0651	12
UNS	\$ 0.0750	8	\$ 0.0759	8
Westar	\$ 0.0718	10	\$ 0.0729	9
Wisconsin	\$ 0.0584	14	\$ 0.0486	14

**FERC Form 1 A&G Analysis  
A&G Compared to O&M Expense Rankings**

<b>Peer Company</b>	<b>2013 A&amp;G / O&amp;M</b>	<b>2013 Ranking</b>	<b>Peer Company</b>	<b>2014 A&amp;G / O&amp;M</b>	<b>2014 Ranking</b>
IdaCorp	19.39%	1	IdaCorp	18.38%	1
PNM	17.25%	2	KCPL	16.17%	2
GMO	16.42%	3	PNM	16.14%	3
KCPL & GMO	16.40%	4	KCPL & GMO	15.54%	4
KCPL	16.39%	5	GMO	14.34%	5
Black Hills	14.36%	6	Black Hills	13.46%	6
Portland	12.80%	7	Portland	13.24%	7
Westar	12.54%	8	Westar	12.82%	8
TECO	12.51%	9	UNS	11.28%	9
UNS	10.90%	10	TECO	10.93%	10
Pinnacle	10.45%	11	Avista	10.69%	11
Avista	9.36%	12	Alliant	9.51%	12
Alliant	9.20%	13	Pinnacle	9.12%	13
Cleco	8.91%	14	Cleco	7.33%	14
Wisconsin	7.91%	15	OGE	7.09%	15
OGE	7.39%	16	Wisconsin	6.70%	16

<b>Peer Company</b>	<b>2013 A&amp;G / O&amp;M</b>	<b>2013 Ranking</b>	<b>2014 A&amp;G / O&amp;M</b>	<b>2014 Ranking</b>
Alliant	9.20%	13	9.51%	12
Avista	9.36%	12	10.69%	11
Black Hills	14.36%	6	13.46%	6
Cleco	8.91%	14	7.33%	14
GMO	16.42%	3	14.34%	5
IdaCorp	19.39%	1	18.38%	1
KCPL	16.39%	5	16.17%	2
KCPL & GMO	16.40%	4	15.54%	4
OGE	7.39%	16	7.09%	15
Pinnacle	10.45%	11	9.12%	13
PNM	17.25%	2	16.14%	3
Portland	12.80%	7	13.24%	7
TECO	12.51%	9	10.93%	10
UNS	10.90%	10	11.28%	9
Westar	12.54%	8	12.82%	8
Wisconsin	7.91%	15	6.70%	16

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Chairman Mark Sievers  
Commissioner Ward Loyd  
Commissioner Thomas E. Wright

In the Matter of the Application of Kansas )  
City Power & Light Company to Modify its ) Docket No. 10-KCPE-415-RTS  
Tariffs to Continue the Implementation of its )  
Regulatory Plan. )

**ORDER ON RATE CASE EXPENSE**

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The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and being



fully advised of all matters of record, the Commission summarizes the arguments of the parties and finds and concludes as follows:

1. Kansas City Power & Light Co. (KCP&L or the Company) filed this rate case on December 17, 2009, as its fourth and final rate case in a series contemplated in the Stipulation and Agreement approved in Docket No. 04-KCPE-1025-GIE (04-1025). In the Commission's decision issued November 22, 2010, KCP&L was awarded a revenue increase of \$21,846,202, which included rate case expense totaling \$5,669,712.<sup>1</sup> Several Petitions for Reconsideration were filed, which were ruled upon by the Commission. Subsequently, in an Order issued February 21, 2011, the Commission granted reconsideration of its prior decisions on rate case expense for this docket, reopened the administrative record to receive evidence on this issue, limited parties participating in the reconsideration process to KCP&L, Citizens' Utility Ratepayer Board (CURB) and the Commission's staff (Staff), allowed additional discovery on this issue, directed filing of appropriate evidence regarding this issue, ordered an evidentiary hearing be scheduled, and designated a new Prehearing Officer to address this issue.<sup>2</sup> Further requests to reconsider this decision were denied.<sup>3</sup> This Order decides the issue of rate case expense.

2. In this proceeding on reconsideration, KCP&L now requests total rate case expense of \$9,033,136 for this docket.<sup>4</sup> This figure includes \$1,422,832 for CURB and Staff costs that were

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<sup>1</sup> Order: 1) *Addressing Prudence*; 2) *Approving Application, in part*; & 3) *Ruling on Pending Requests*, filed November 22, 2010, pages 90-91, 95, 138-42 and Exhibit IV, pages 1-3 (November 22, 2010 Order, pp. 90-91, 95, 138-42 and Exh. IV, pp. 1-3).

<sup>2</sup> *Order Granting KCP&L's and CURB's Second Petitions for Reconsideration and Clarification*, issued February 21, 2011 (February 21, 2011 Order), ¶¶ 15, 18, 20. See *Order Nunc Pro Tunc Regarding February 21, 2011 Order Granting KCP&L's and CURB's Second Petitions for Reconsideration and Clarification*, issued March 3, 2011, ¶ 3 and Ordering Clause (A) (Commission clarifies that only the rate case expense portion of the revenue requirement for this docket is designated interim, non-final agency action subject to further proceedings).

<sup>3</sup> *Order Denying KCP&L's Petition for Reconsideration and Clarification of February 21, 2011 Order*, issued April 6, 2011 (April 6, 2011 Order), ¶¶ 18-19, 21-24.

<sup>4</sup> Tr. Vol. 15, p. 3374 (Weisensee). In this proceeding, KCP&L initially requested total rate case expense of \$9,070,515, Weisensee Direct, p. 2, but this was reduced to \$9,034,529 in rebuttal testimony due to billing errors identified by Staff Witness Baldry. Weisensee Rebuttal, p. 3. At the hearing, the amount was decreased further to \$9,033,136 based on additional errors found during discovery. Tr. Vol. 15, p. 3374 (Weisensee).

assessed to KCP&L pursuant to K.S.A. 66-1502; the remaining costs of \$7,610,304 are for KCP&L-only rate case expense.<sup>5</sup> In its November 22, 2010 Order, the Commission awarded KCP&L rate case expense of \$5,669,712 for this proceeding that included \$1,169,712 for CURB and Staff costs and \$4.5 million for KCP&L-only rate case expense.<sup>6</sup> KCP&L now requests an additional \$3,400,000 to reflect “the rate case expense actually incurred by the Company through November 30, 2010.”<sup>7</sup> The purpose of this follow-up proceeding is to reconsider and decide what rate case expense to include in the revenue requirement to be recovered from KCP&L’s ratepayers.<sup>8</sup>

3. Eight witnesses submitted prefiled testimony on the issue of rate case expense, as follows: KCP&L witnesses were John P. Weisensee,<sup>9</sup> Tim M. Rush,<sup>10</sup> and William H. Downey<sup>11</sup>; CURB witnesses were Ralph C. Smith,<sup>12</sup> Stacey Harden,<sup>13</sup> and Andrea C. Crane<sup>14</sup>; and Staff witnesses were William E. Baldry<sup>15</sup> and Jeffrey D. McClanahan.<sup>16</sup> All eight witnesses testified during the evidentiary hearing, with the Commission presiding, held on September 6 through 8, 2011.<sup>17</sup> Attorneys appearing at the evidentiary hearing were: Frank A. Caro, Jr., Luke A.

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<sup>5</sup> Weisensee Direct, p. 2. In a rate case, expenses incurred by the Commission, its staff, and CURB are assessed against the public utility. K.S.A. 66-1502. *Order Assessing Costs*, filed December 23, 2009.

<sup>6</sup> November 22, 2010, pp. 90-91, 95.

<sup>7</sup> Weisensee Direct, p. 2. The Company chose November 30, 2010, as the cut-off date for rate case expense to tie accounting records to the nearest month-end to the cut-off date for rate case expense set by the Commission at November 22, 2010, when the Order setting the revenue requirement for this case was filed. *February 21, 2011 Order*, ¶¶ 28-31; November 22, 2010 Order, p. 90, citing *Columbus Telephone Co. v. Kansas Corporation Comm’n*, 31 Kan. App. 2d 828, 835, 75 P.3d 257 (2003).

<sup>8</sup> February 21, 2011 Order, ¶ 3.

<sup>9</sup> Direct Testimony of John P. Weisensee, filed May 6, 2011 (Weisensee Direct); Rebuttal Testimony of John P. Weisensee, filed August 5, 2011 (Weisensee Rebuttal).

<sup>10</sup> Direct Testimony of Tim M. Rush, filed May 6, 2011 (Rush Direct); Rebuttal Testimony of Tim M. Rush, filed August 5, 2011 (Rush Rebuttal).

<sup>11</sup> Rebuttal Testimony of William H. Downey, filed August 5, 2011 (Downey Rebuttal).

<sup>12</sup> Direct Testimony of Ralph C. Smith, filed July 6, 2011 (Smith Direct).

<sup>13</sup> Direct Testimony of Stacey Harden, filed July 6, 2011 (Harden Direct).

<sup>14</sup> Direct Testimony of Andrea C. Crane, filed July 6, 2011 (Crane Direct).

<sup>15</sup> Direct Testimony of Jeffrey D. McClanahan, filed July 6, 2011 (McClanahan Direct).

<sup>16</sup> Direct Testimony of William E. Baldry, filed July 6, 2011 (Baldry Direct).

<sup>17</sup> In this Order, discussion of an evidentiary hearing refers to the September 6 through 8, 2011, evidentiary hearing on rate case expense. Any discussion of the evidentiary hearing in the underlying rate case, which was held August 16 to September 2, 2010, is referred to as the 2010 Evidentiary Hearing.

Hagedorn, Heather Humphrey, and Denise Buffington, on behalf of KCP&L; C. Steven Rarrick on behalf of CURB; and Patrick Smith on behalf of Staff and the public generally.<sup>18</sup> Hearing no objection to notice of the hearing, the Commission found notice was proper and jurisdiction existed over this proceeding at this time and place.<sup>19</sup>

4. The decision reflected in this Order is based upon the Commission's evaluation of all evidence presented on rate case expense and, as necessary, evidence presented earlier in this proceeding, including during the evidentiary hearing conducted before the Commission from August 16 through September 2, 2010. Thus, the record as a whole has been considered.<sup>20</sup> In reaching its decision, the Commission has evaluated numerous factors and has drawn from its expertise as the administrative agency delegated with the responsibility to regulate public utilities.<sup>21</sup> This Commission consists of three commissioners, all of whom are attorneys. In addition to reviewing the evidence presented, we have drawn from our individual and combined knowledge and experience to arrive at an amount of rate case expense that we find is prudent and is just and reasonable for KCP&L to recover from its ratepayers for this rate case.

5. As explained below, the Commission in this Order concludes that (1) KCP&L is allowed to recover the assessed rate case expense of \$1,422,832 for Staff and CURB; (2) KCP&L has not presented detailed, credible evidence to establish its management prudently incurred all rate case expense requested in this proceeding; and (3), based on the evidence in this proceeding, KCP&L is allowed to recover from its ratepayers \$4,500,000 in KCP&L-only rate case expense. The Commission is not persuaded that KCP&L has presented sufficient evidence to justify increasing the award of KCP&L-only rate case expense above what the Commission originally approved in its November 22, 2010 Order. Therefore, KCP&L will recover total rate case expense of \$5,922,832 as part of its revenue requirement. KCP&L has had rates recovering the

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<sup>18</sup> Transcript of Proceedings, September 6, 2011, Volume 15, page 3334 (Tr. Vol. 15, p. 3334).

<sup>19</sup> Tr. Vol. 15, p. 3335.

<sup>20</sup> K.S.A. 2010 Supp. 77-621(c)(7) and (d).

<sup>21</sup> K.S.A. 66-101, 66-101b, 2010 Supp. 66-104.

four-year amortization of \$5,669,712<sup>22</sup> based on the November 22, 2010 Order.<sup>23</sup> To recover the additional \$253,120 awarded, KCP&L shall amortize this additional amount over three years.

### I. Background

6. This proceeding was KCP&L's fourth and final rate case in the series of rate cases contemplated in KCP&L's Resource Plan adopted in the Stipulation and Agreement approved in Docket 04-1025 (04-1025 S&A) on December 17, 2009, as reflected in the following Chart of KCP&L rate case proceedings under its Resource Plan:

**Chart of KCP&L Resource Plan Proceedings:**

<u>Docket No.</u>	<u>Caption</u>	<u>Filed</u>	<u>Hearing</u>	<u>Order</u>
04-KCPE-1025-GIE	<i>In the Matter of the Future Supply Delivery and Pricing of the Electric Service Provided by Kansas City Power and Light Company.</i>	5-18-04	6-17-05	8-5-05
06-KCPE-828-RTS	<i>In the Matter of the Application of Kansas City Power &amp; Light Company to Modify its Tariffs to Continue the Implementation of its Regulatory Plan</i>	1-31-06	10-5-06	12-4-06
07-KCPE-905-RTS	<i>In the Matter of the Application of Kansas City Power &amp; Light Company to Modify its Tariffs to Continue the Implementation of its Regulatory Plan</i>	3-1-07	9-10-07	11-20-07
09-KCPE-246-RTS	<i>In the Matter of the Application of Kansas City Power &amp; Light Company to Modify its Tariffs to Continue the Implementation of its Regulatory Plan.</i>	9-5-08	6-22-09	7-24-09
10-KCPE-415-RTS	<i>In the Matter of the Application of Kansas City Power &amp; Light Company to Modify its Tariffs to Continue the Implementation of its Regulatory Plan.</i>	10-17-09	8-16 to 9-2-10 9-6 to 9-8-11	11-22-10 Pending
11-KCPE-581-PRE	<i>In the Matter of the Petition of Kansas City Power &amp; Light Company (KCP&amp;L) for Determination of the Ratemaking Principles and Treatment That Will Apply to the Recovery in Rates of the Cost to be Incurred by KCP&amp;L for Certain Electric Generation Facilities Under K.S.A. 66-1239.</i>	2-23-11	7-11 to 7-15-11	8-19-11

<sup>22</sup> November 22, 2010 Order, pp. 95.

<sup>23</sup> November 22, 2010 Order, p. 83-95.

7. Following a 14-day evidentiary hearing in this rate case, conducted from August 16 through September 2, 2010 (referred to in this Order as the 2010 Evidentiary Hearing), the Commission issued an Order on November 22, 2010, that addressed prudence related to KCP&L's remaining investment in Iatan common plant, environmental upgrades to Iatan Unit 1, and construction of Iatan 2 and that also ruled on numerous other traditional rate case issues.<sup>24</sup> The Commission was asked to decide an amount of rate case expense to include in the revenue requirement, but it found this very difficult due to statutory time constraints for issuing an Order and lack of evidence to support KCP&L's requested amount of \$8,319,363. The request included assessed rate case expense for Staff and CURB of \$1,169,712 and the balance for KCP&L-only costs of \$7.1 million (approximately \$5 million for lawyers and legal fees plus expenses, \$2 million for non-lawyer consultants, and \$117,000 for expenses such as photocopies, hotels, etc.).<sup>25</sup> The Commission found the amount requested for KCP&L-only legal services of more than \$5 million was excessive, even taking into account the complex issues addressed in this rate case.<sup>26</sup> After discussing numerous factors considered in reviewing the evidence on rate case expense, the Commission concluded \$4,500,000 was an appropriate amount of rate case expense for KCP&L-only costs to be recovered from ratepayers. The Commission also approved the assessed rate case expense of \$1,169,712 for Staff and CURB and allowed total rate case expense of \$5,669,712 to be included in KCP&L's revenue requirement.<sup>27</sup> In reaching this decision, the Commission held the amount of rate case expense established in its Order would be treated as Interim Rate Relief. In doing so, the Commission recognized that this amount was prudent, just, and reasonable, and that setting the amount cut off conjecture about future costs not known and measurable. But it recognized the decision was subject to challenge.<sup>28</sup>

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<sup>24</sup> November 22, 2010 Order, pp. 4-6.

<sup>25</sup> November 22, 2010 Order, p. 90.

<sup>26</sup> November 22, 2010 Order, p. 92.

<sup>27</sup> November 22, 2010 Order, pp. 86-95.

<sup>28</sup> November 22, 2010 Order, p. 90.

8. Both KCP&L and CURB challenged the rate case expense decision in their respective Petitions for Reconsideration. In ruling on these Petitions, the Commission rejected KCP&L's assertion that the Company was entitled to recover all rate case expense shown to be prudent and pointed to its statement in the November 22, 2010 Order "that rate case expense must be prudently incurred by the Company and must also be fair and reasonable for them to be borne by ratepayers. Thus, merely showing prudent expenditures is not enough."<sup>29</sup> Because the record did not contain sufficient evidence to establish a specific amount for rate case expense, the Commission exercised its judgment to determine an amount of prudently incurred rate case expense that it considered appropriate to be borne by KCP&L ratepayers.<sup>30</sup> The Commission reaffirmed its decision that KCP&L-only rate case expense of \$4,500,000 was prudently incurred and was just and reasonable to recover from ratepayers. The Commission then held that this amount of rate case expense would no longer be considered Interim Rate Relief and denied KCP&L's request to create a separate account to record these expenses.<sup>31</sup> The Commission also addressed CURB's issues on rate case expense.<sup>32</sup> Having concluded the amount of \$4,500,000 approved in its November 22, 2010 Order for KCP&L-only rate case expense should not be treated as interim relief, the Commission held the total amount of rate case expense appropriate for KCP&L to recover from its ratepayers as part of the revenue requirement was \$5,669,712.<sup>33</sup>

9. Once again, both KCP&L and Westar challenged the Commission's decision on rate case expense in Petitions for Reconsideration. Both criticized the Commission for deciding rate case expense while recognizing the record lacked details on this issue. Also, both KCP&L and CURB pointed out that they recommended the Commission address rate case expense as part of an abbreviated, follow-up rate case proceeding under K.A.R. 82-1-231(b)(3), which the

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<sup>29</sup> *Order on Petitions for Reconsideration and Clarification and Order Nunc Pro Tunc*, issued January 6, 2011 Order, page 75 (January 6, 2011 Order, p. 75)(footnote omitted), *citing* November 22, 2010 Order, p. 88.

<sup>30</sup> January 6, 2011 Order, ¶¶ 74-76.

<sup>31</sup> January 6, 2011 Order, ¶ 77.

<sup>32</sup> January 6, 2011 Order, ¶¶ 78-83.

<sup>33</sup> January 6, 2011 Order, ¶¶ 84-85.

Commission denied, and that resulted in an inadequate record on this issue.<sup>34</sup> After reviewing their Petitions, the Commission agreed the issue of rate case expense should be examined further and granted reconsideration in its February 21, 2011 Order, noting the award could be more or less than the rate case expense decided in the November 22, 2010 Order.<sup>35</sup> The Commission (1) limited participation in this reconsideration proceeding to KCP&L, CURB and Staff, (2) opened the administrative record to receive new evidence on the issue of rate case expense, (3) ordered that KCP&L and CURB could conduct discovery and file appropriate evidence on this issue, (4) directed an evidentiary hearing be scheduled, and (5) appointed a new prehearing officer to address this issue.<sup>36</sup>

10. KCP&L filed a final Petition for Reconsideration, arguing the Commission erred in cutting off recovery for rate case expense at November 22, 2010, because the Company would have to bear expenses incurred after that date. The Commission disagreed with KCP&L's argument and denied reconsideration. The Commission explained that it set the cut-off date to coincide with the November 22, 2010 Order following this agency's long-standing practice of recognizing an end-date for inclusion of rate case expense with the order that established the utility's revenue requirement.<sup>37</sup> The Commission further noted that its decision to cut off rate case expense on November 22, 2010, took into account the large amount of rate case expense that ratepayers have already been required to pay for KCP&L's series of rate cases arising from its Resource Plan approved in Docket 04-1025. This amount included an additional \$2.3 million rate case expense for KCP&L's last rate case in Docket 09-KCPE-246-RTS (09-246) that the Commission granted in the November 22, 2010 Order.<sup>38</sup> We note rate case expense for the two prior rate cases under the Resource Plan included \$1,196,430 for Docket 06-KCPE-828-RTS and \$457,582 for Docket 07-KCPE-905-RTS. Thus, KCP&L has already been approved to receive

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<sup>34</sup> November 22, 2010 Order, pp. 135-37.

<sup>35</sup> February 21, 11 Order, ¶ 8 ("Based on this review, the Commission may decide to grant a smaller or larger amount for rate case expense for this proceeding than decided in its November 22, 2010 Order.").

<sup>36</sup> February 21, 2011 Order, ¶ 3.

<sup>37</sup> April 6, 2011 Order, ¶¶ 17-24.

<sup>38</sup> April 6, 2011 Order, ¶ 18, *citing* November 22, 2010 Order, p. 88.

more than \$3.9 million in rate case expense for implementing its Resource Plan. The Commission has also pointed out that KCP&L proposed a never-ending process by which an outside attorney files a pleading addressing rate case expense and, in doing so, incurs additional rate case expense that KCP&L will seek to recover through additional rate case expense or as a regulatory asset. The Commission rejected KCP&L's proposal, noting that other utilities have not requested rate case expense for proceedings in a rate case that followed the Commission Order setting the Company's revenue requirement.<sup>39</sup> The remaining issue to decide here is the amount of rate case expense KCP&L will recover from its ratepayers for this rate case proceeding.

## **II. Procedural Rulings During the Evidentiary Hearing**

11. During the evidentiary hearing, KCP&L Exhibits 4 and 5 were offered into evidence but a decision of whether to admit them was taken under advisement.<sup>40</sup> KCP&L Exhibit 4 is a chart showing a list of issues with corresponding KCP&L witnesses and attorneys; the date of the document is identified as "11/17/2009 Draft." KCP&L Exhibit 5 is an undated Rebuttal Issues List showing Staff and CURB witnesses, KCP&L witnesses, KCP&L attorneys, and KCP&L regulatory people. Both Exhibits were identified by KCP&L Witness Rush, on redirect examination, as documenting the company's efforts to control, supervise, and monitor the work by the numerous outside attorneys and consultants involved in this proceeding.<sup>41</sup> Staff and CURB objected to admission of these documents and urged the Commission to reject them because neither document was disclosed in response to discovery requests propounded on the subject of assignment of issues.

12. The Commission rejects KCP&L's explanation that it did not disclose these exhibits in response to data requests because the questions did not specifically ask for documents or because KCP&L did not understand until the hearing that provision of sufficient detail was an issue in this proceeding. The Commission is concerned that, in not disclosing these exhibits during discovery, KCP&L was involved in a gamesmanship not appropriate to regulatory proceedings. Utilities

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<sup>39</sup> April 6, 2011 Order, ¶ 23, and n. 56.

<sup>40</sup> Tr. Vol. 16, pp. 3848, 3859.

<sup>41</sup> Tr. Vol. 16, pp. 3837-48 (Exh. 4) and 3848-54 (Exh. 5).



control the documents needed to decide issues in a rate case and are obliged under K.A.R. 82-1-231(a) to provide all relevant facts and data pertaining to its business and operations to assist in deciding the issues. Furthermore, information reflected in these exhibits likely would have been helpful when sorting through the hundreds of pages of invoices and billings received from KCP&L. Nonetheless, the Commission concludes KCP&L Exhibits 4 and 5 are relevant to the issue of rate case expense and, therefore, are admitted and are given appropriate weight and consideration by the Commission in its deliberations. The Commission concludes that KCP&L Exhibits 4 and 5 provide minimal evidence to support KCP&L's claim that the Company adopted a detailed process to monitor activities and expenses incurred by outside attorneys and consultants.

13. The Commission also took admission of KCP&L Exhibit 8, titled "2010 Regulatory Strategy Team (RST) Charter," under advisement.<sup>42</sup> Again, Staff and CURB objected to introducing this exhibit during redirect of KCP&L Witness Rush rather than disclosing it during discovery. The Commission finds KCP&L Exhibit 8 relevant and admits it as part of the record and has given this document the appropriate weight and consideration in the Commission's deliberations.

14. KCP&L Exhibit 2 is a compact disc (CD) that KCP&L argued contains work papers that support testimony of KCP&L Witnesses Weisensee and Rush; the CD was provided to Staff and CURB at the time direct testimony was filed by these witnesses on May 6, 2011. Staff and CURB objected to admission of KCP&L Exhibit 2 because this CD contains invoices and bills from vendors and timekeepers that KCP&L relied upon to support its rate case increase request. Staff and CURB argued contents of this CD should have been offered as part of prefiled testimony of these witnesses when filed, not provided to Staff and to CURB separately as if they merely contained work papers that are usually filed separate from testimony.<sup>43</sup> Both Staff and CURB have had access to KCP&L Exhibit 2 from the time KCP&L filed its direct testimony on

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<sup>42</sup> Tr. Vol. 16, pp. 3854-59.

<sup>43</sup> Tr. Vol. 16, pp. 3866-72.

the rate case expense issue. The Commission finds the information on KCP&L Exhibit 2 is relevant and admits it into the record. The Commission further finds that, because Staff and CURB had access to this information from the time direct testimony was filed by Weisensee and Rush, Staff and CURB were not prejudiced by admission of KCP&L Exhibit 2 into this record.<sup>44</sup>

15. Finally, the Commission may take official notice of matters that could be judicially noticed in Kansas courts, the record of other proceedings before the Commission, and technical or scientific matters within the Commission's specialized knowledge.<sup>45</sup> The Commission takes Administrative Notice of the following item from a prior Commission docket that was previously cited in the November 22, 2010 and February 21, 2011 Orders<sup>46</sup>:

- a. In the Matter of an Audit and General Rate Investigation of Rural Telephone Company, Docket No. 01-083, *Order Regarding Rate Design*, filed November 16, 2001.

### **III. Factors Considered in Determining Rate Case Expense**

16. The Commission has a long-standing policy of including fair and reasonable rate case expenses that are prudently incurred by a company in a rate case in costs to be borne by ratepayers.<sup>47</sup> Historically in Kansas the general rule has been to consider prudently incurred rate case expense among the reasonably necessary expenses a public utility is entitled to recover as part of its revenue requirement in a rate case.<sup>48</sup> As with any expense recovered in revenue requirement, the utility has the burden to establish by substantial evidence in the record that the expense is known and measurable<sup>49</sup> and is prudent and reasonable.<sup>50</sup> Substantial evidence must

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<sup>44</sup> Although this Order has been designated as setting precedent under 2011 House Bill No. 2027, amending K.S.A. 2010 Supp. 77-415, our rulings on admission of evidence, namely Exhibits 2, 4, 5, and 8, are specific to the facts before us and do not create precedent for subsequent proceedings.

<sup>45</sup> K.S.A. 77-524(f); K.S.A. 60-409; K.A.R. 82-1-230(h).

<sup>46</sup> Tr. Vol. 16, pp. 3918-22.

<sup>47</sup> *In the Matter of the Application of Westar Energy, Inc.*, Docket No. 05-WSEE-981-RTS, Order on Reconsideration, issued February 13, 2006, ¶ 93. See *Driscoll v. Edison Light & Power Co.*, 307 U.S. 104, 120-21 (1939) ("[T]he utility should be allowed its fair and proper expenses for presenting its side to the commission.").

<sup>48</sup> *Home Telephone Co. v. Kansas Corporation Comm'n*, 31 Kan. App. 2d 1002, 1015, 76 P.3d 1071 (2003). See November 22, 2010 Order, pp. 87-88;

<sup>49</sup> 31 Kan. App. 2d at 1015.

<sup>50</sup> *Kansas Industrial Consumers v. Kansas Corporation Comm'n*, 36 Kan. App. 2d 83, 111, 138 P.3d 338 (2006). See November 22, 2010 Order, pp. 87-88; January 6, 2011 Order, ¶ 75; Feb. 21, 2011 Order, ¶ 13.

be both relevant and have substance that “furnishes a substantial basis of fact from which issues can reasonably be resolved.”<sup>51</sup> The underlying purpose of this entire proceeding has been to establish “just and reasonable” rates.<sup>52</sup> The Commission’s goal in a rate case is to determine a rate that is within the “zone of reasonableness.”<sup>53</sup>

17. In determining whether prudently incurred rate case expense should be considered reasonable and included in revenue requirement recovered from ratepayers, the Commission must weigh and balance competing policies. The Kansas Supreme Court has observed that in setting utility rates, the Commission must consider and balance interests of the following parties: (1) The utility’s investors vs. the ratepayers; (2) the present ratepayers vs. the future ratepayers; and (3) the public interest.<sup>54</sup> This balancing of competing interests is an integral part of the review conducted by the Commission to determine reasonableness.

18. When the Commission is called upon to determine the reasonableness of time billed and labor expended in litigating a case, the utility holds the information needed to support its request. The utility has the burden to prove that the hours billed are reasonable “by submitting meticulous, contemporaneous time records that reveal, for each lawyer for whom fees are sought, all hours for which compensation is requested and how those hours were allotted to specific tasks.”<sup>55</sup> KCP&L has recognized that the Commission is considered an expert in making a

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<sup>51</sup> *Home Telephone*, 31 Kan. App. 2d at 1078-79.

<sup>52</sup> K.S.A. 66-101b; K.S.A. 66-101f.

<sup>53</sup> *Kansas Gas & Electric, v. Kansas Corporation Comm’n*, 239 Kan. 483, 488-89, 500-01 (1986), vacated in part by *Kansas Gas and Electric Co. v. Kansas Corporation Comm’n*, 48 U.S. 1044 (1987). See, *Power Comm’n v. Hope Gas Co.*, 320 U.S. 591 (1944); *In re Permian Basin Area Rate Cases*, 390 U.S. 747,770 (1968).

<sup>54</sup> *Kansas Gas & Electric*, 239 Kan. at 488..

<sup>55</sup> *Case v. Unified Sch. Dist. No. 233*, 157 F.3d 1243, 1250 (10<sup>th</sup> Cir. 1998). See *Kansas Industrial Consumers v. Kansas Corporation Comm’n*, 36 Kan. App. 2d 83, 111-12, 138 P.3d 338 (2006) (the reviewing court will determine if substantial evidence in the record supports an agency’s findings of appropriate attorney fees). February 21, 2011 Order, ¶¶ 21-22 and notes 36-38; November 22, 2010 Order, pp. 88-89.

decision on rate case expense and draws from its knowledge and experience in evaluating the value of services rendered in this proceeding.<sup>56</sup>

19. The Commission has considered a wide range of factors in arriving at an appropriate rate case expense for this docket. Because this issue is being reviewed on reconsideration, the Commission is not faced with the statutory, 240-day deadline of K.S.A. 66-117, which restricted review of rate case expense in the regular rate case proceeding. In issuing its November 22, 2010 Order, the Commission noted the record did not contain detailed information on rate case expense.<sup>57</sup> In its January 6, 2011 Order, the Commission granted reconsideration of rate case expense and ordered further proceedings to allow KCP&L and CURB to be heard on this issue, including presenting additional evidence to support their claims on rate case expense.<sup>58</sup> We note that KCP&L has continued to argue that the Commission should have allowed it to recover all its requested rate case expense based on it providing actual expenses to Staff at the end of the limited timeline for issuing an Order in the rate case.<sup>59</sup> But KCP&L's evidence to support its request, including responses to Staff Data Requests (DRs) 554 and 555 (which responses were submitted on a compact disc that is extremely difficult to decipher), was based on estimates and did not provide detailed evidence to support the request. Granting reconsideration here has allowed KCP&L the opportunity to file whatever evidence it wanted to support its request for rate case expense, resulting in a voluminous record on this issue. Thus, the Commission has not retroactively required a different process than previously used but instead has given KCP&L additional time and opportunity to submit evidence that should have been provided all along under the accepted practice to support a request for rate case expense in this proceeding.

20. Parties were given guidance during this proceeding about what evidence should be presented and how. During the prehearing conference on March 3, 2011, Prehearing Officer

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<sup>56</sup> KCP&L Pre-hearing Brief, filed August 15, 2011, ¶ 5; February 21, 2011 Order, ¶ 23, citing *Snider v. American Family Mut. Ins. Co.*, 45 Kan. App. 2d 196, 244 P.3d 1285 (2011); *Johnson v. Westhoff Sand Co.*, 281 Kan. 930, 940, 135 P.3d 1127 (2006); *Westar Energy v. Wittig*, 44 Kan. App. 2d 206 (2010).

<sup>57</sup> November 22, 2010 Order, pp. 88-89.

<sup>58</sup> February 21, 2011 Order, ¶¶ 15, 26.

<sup>59</sup> KCP&L Post Hearing Brief, ¶ 22-23.

Coffman discussed the detail of information the Commission wanted, summarizing three different levels of information. First, the Commission wanted a general overview listing all vendors, the total amount of rate case expense requested for each vendor and a brief description of what issue or work was done by each vendor. Second, KCP&L was to provide a summary for each vendor listing each timekeeper working for the vendor and state the overall amount being requested for each timekeeper with a brief description of the nature of the work that timekeeper performed. Third, detailed information was to be provided for each timekeeper that included the hourly rate, number of hours worked, dates these hours were worked, and a description of work performed on those dates. Billing statements for attorneys were to comply with Rule 1.5 of the Kansas Rules of Professional Conduct and any amount for a vendor included in capital costs or capitalized in project costs was to be explained. KCP&L was further expected to clarify any allocation of rate case expense between jurisdictions.<sup>60</sup> The Commission confirmed its desire to receive information providing detail as described by Prehearing Officer Coffman during the Prehearing Conference.<sup>61</sup>

21. Yet the Commission finds the evidence submitted in this proceeding still lacked detail desired to calculate rate case expense. For example, the description of work performed given by timekeepers was almost always set out as block descriptions per day rather than breaking out time spent on specific issues; this rendered impossible any meaningful comparison of work to identify duplication of effort on issues. This lack of detail made it impossible to rationally analyze billings submitted by multiple attorneys from several different law firms. For some consultants, essentially no description was made that could be used to decipher what issues were being addressed by individual timekeepers. The lack of detail in descriptions made it impossible to determine whether the claimed work was actually performed in a competent manner and useful in the rate case, whether the company was prudent in incurring costs for each attorney or consultant,

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<sup>60</sup> Transcript of Prehearing Conference, March 9, 2011 (March 9, 2011 Prehe. Tr.), pp. 7-10. *Prehearing Officer's Report and Recommendation Following Prehearing Conference on March 9, 2011*, filed April 19, 2011, ¶ 4.

<sup>61</sup> *Order Addressing Prehearing Officer's Report and Recommendation Following Prehearing Conference on March 9, 2011*, issued June 24, 2011, ¶¶ 7, 20.

and whether it is just and reasonable to pass these costs through to ratepayers as rate case expense.

22. KCP&L has argued that the Commission is setting a new policy for deciding rate case expense in this docket, but the Commission has already addressed and rejected that argument.<sup>62</sup> While the Commission and its Prehearing Officer have articulated directives to give guidance to KCP&L about the information needed, the Commission has previously stated its reasons for requiring a utility to provide actual and detailed documentation of expenses incurred, rather than relying on estimates,<sup>63</sup> as follows:

Attorney fees included as a rate case expense to be passed onto regulated ratepayers must be reasonable. Rule 1.5 of the Kansas Rules of Professional Conduct sets out eight factors this Commission should consider in determining whether attorney fees are reasonable. In making its decision, the Commission should draw from its knowledge and expertise in evaluating the value of services provided by the attorneys and exercise its sound discretion in determining reasonable attorney fees. The Commission may reduce an attorney fee award if the recording of tasks worked on is insufficient, if multiple attorneys duplicate their effort, when time is expended on activities unrelated to issues or litigation, and for time spent on travel.

This Commission has allowed recovery of reasonable attorney fees as part of rate case expense. In this docket, the attorney fees submitted for inclusion as a rate case expense have several problems. No effort has been made to provide an itemized statement of the nature of the activity or services performed by any of the attorneys. This prevents the Commission from considering the nature of the legal services provided and from examining the hours submitted to review for duplication of efforts by multiple attorneys, time expended on legal services unrelated to the pending docket, and nonproductive travel time. The Commission

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<sup>62</sup> February 21, 2011 Order, ¶¶ 11-13, *citing* November 22, 2010, pp. 88-89 (Evidence on rate case expense should reflect “the time and amount of services rendered, the general nature and character of the services revealed by invoices, whether attorneys or consultants presented testimony or other tangible work product that was made a part of the record, the nature and importance of the litigation, and the degree of professional ability, skill, and experience called for and used during the course of the proceeding.”) (citations omitted); January 6, 2011 Order, ¶¶ 73-74.

<sup>63</sup> *In the Matter of an Audit and General Rate Investigation of Rural Telephone Company*, KCC Docket 01-RRLT-083-AUD, Order Setting Rate Case Expense, issued November 16, 2001 (Rural Telephone November 2001 Order), ¶¶ 27-32.

also needs to be able to review the billings to assure Kansas ratepayers are not paying high legal rates for services of a non-legal nature. The company and law firm need to be aware that in the future the Commission will not approve attorney fees that do not contain an itemized statement of the nature of the activity or services performed, the amount of time expended for each activity or service, and the identity of the attorney or other personnel that performed each activity or service. The detailed itemization expected by the Commission is standard for most law firms and is provided in corporate billings by public utilities that seek to pass the expense to ratepayers.

Also, the Commission is concerned that the hourly rate for attorney services that [the Company] has asked this Commission to pass onto [its] ratepayers is 30 percent higher than the hourly rate for services provided by extremely experienced regulatory attorneys that have been submitted by other companies in recent rate case dockets conducted before this Commission. The Commission notes that it is concerned about the appropriate amount of attorneys fees that should be passed on in regulated rates to Kansas customers, not how much [the Company] agrees to pay its attorneys for legal consultation about unregulated affairs. This issue will be reviewed closely in future dockets.<sup>64</sup>

23. This quote makes clear the Commission is following a consistent policy requiring detailed documentation of actual expenses incurred, not merely estimates, to establish rate case expense. Before beginning a more granular analysis of KCP&L's request for rate case expense, we note the record before us reflects a remarkable number of timekeepers and billings. Included with this Order as Attachment A is a summary of the hours billed and amounts requested for each firm and individual timekeeper. In this case, six law firms with 47 timekeepers (lawyers, consultants and paralegals) billed more than 16,000 hours toward this case. In addition to the law firms, eight outside consulting firms with a total of 46 individual timekeepers billed more than 9,700 hours. Thus, the total work effort of outside attorneys and consultants on behalf of KCP&L involved 90 individual timekeepers billing more than 25,000 hours of legal and professional services to the litigation portion of this regulatory proceeding. These numbers shock the conscience of the Commission.

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<sup>64</sup> Rural Telephone November 2001 Order, ¶¶ 28-30 (citations omitted). Tr. Vol. 17, pp. 3918-20 (Loyd).

#### **IV. Determining Prudent and Just and Reasonable Attorney Fees**

24. The largest portion of KCP&L's rate case expense is for legal fees and expenses. Lack of detail has made it difficult for the Commission to perform a "lodestar calculation" used to set reasonable attorney fees; using this method, reasonable attorney fees are determined by multiplying a reasonable number of hours worked by a reasonable hourly rate to arrive at the "lodestar amount" that is adjusted further to account for the eight factors set out in Rule 1.5 of the Kansas Rules of Professional Conduct.<sup>65</sup> The eight factors listed in Rule 1.5 to provide guidance in calculating reasonable attorney fees are as follows:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.<sup>66</sup>

25. The Commission notes that, with regard to Rule 1.5(8), none of the agreements for attorney fees were contingent upon the outcome of this proceeding; instead, fixed hourly rates were set for outside law firms, but these rates consistently increased during the course of this proceeding for every attorney whose billings were reviewed. The Commission has been offered no reasonable explanation for why, in the midst of the country's worst recession when most businesses are reducing prices to attract customers, every attorney's hourly rate increased during

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<sup>65</sup> *Sheldon v. Vermonty*, 237 F. Supp. 2d 1270, 1274 (D. Kan. 2002).

<sup>66</sup> November 22, 2010 Order, p. 89, n. 340.



the pendency of this proceeding. The Commission further notes that, with regard to Rule 1.5(7), all lawyers involved in this proceeding have a good reputation and appear to be capable attorneys. Attorneys Cafer, Caro, Callenbach, and Steiner, who appeared at the 2010 Evidentiary Hearing on behalf of KCP&L, are experienced and known to the Commission. Other timekeepers believed to be attorneys<sup>67</sup> are not known to the Commission and, based on their respective hourly rate, some appear to be much less experienced.<sup>68</sup> The remaining factors have been considered in conducting the lodestar calculation discussed in this Order.

26. In updating its actual rate case expense through November 30, 2010, to \$9,033,136,<sup>69</sup> KCP&L argued that the Commission must take into account that “rate case expenditures involve some degree of management choice and discretion whether to incur the expenses.”<sup>70</sup> The Commission is aware of the respect it must accord management decisions in reviewing whether decisions made incurring rate case expense in this docket were prudent. In analyzing this issue, the Commission evaluates such management choice and discretion as bounded by “prudence” defined as “carefulness, precaution, attentiveness and good judgment.”<sup>71</sup> In other words, the Commission will not pass through to rates the costs arising from imprudent management choices and discretion because utilities have no right to recover their costs simply because they have incurred them. Rates that may include imprudent or excessive rate case expense costs would be an unjust or unreasonable rate, charge or extraction, and thus prohibited and void.<sup>72</sup> Following is a discussion of factors we considered in evaluating the evidence as a whole to reach a decision on rate case expense.

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<sup>67</sup> *Infra*, ¶¶ 51-52.

<sup>68</sup> Schedules JPW2010-14 (Polsinelli Shughart Level 2 Summary) and JPW2010-15 (Schiff Hardin Level 2 Summary).

<sup>69</sup> Tr. Vol. 15, p. 3374 (Weisensee). See Weisensee Rebuttal, p. 3; Weisensee Direct, p. 2.

<sup>70</sup> KCP&L Prehearing Brief, ¶ 6, *quoting* 31 Kan. App. 2d 1015, *citing Columbus Telephone Co. v. Kansas Corporation Comm’n*, 31 Kan. App. 2d 828 (2003).

<sup>71</sup> Black’s Law Dictionary 1104 (WEST 5<sup>th</sup> Ed. 1979). See November 22, 2010 Order, p. 13.

<sup>72</sup> K.S.A. 66-101b.

### A. The American Rule

27. The Commission begins its analysis of attorney fees by noting that the custom and practice of recovering legal expenses in utility cases differs markedly from the general practices of civil and criminal litigation. Under the “American Rule” of civil litigation, parties bear their own attorney fees and costs of litigating a case, unless a contractual or statutory requirement changes this policy.<sup>73</sup> The American Rule is well established in Kansas courts, which reflects that generally litigants in this state are expected to bear their own attorney fees.<sup>74</sup> Intervenors in regulated proceedings in Kansas generally must bear their own legal expenses for participating in the proceeding and appearing before the Commission. Several intervenors in this docket have paid their own attorney fees, including entities such as the Hospital Intervenors and Shawnee Unified School District No. 512.<sup>75</sup> In Kansas by statute, expenses for the Commission and its Staff and for CURB are assessed against the utility filing a rate case.<sup>76</sup> Also, the Kansas Supreme Court has set out guidelines for district courts to consider in determining reasonable attorney fees.<sup>77</sup> In reviewing these guidelines in the context of awarding attorneys fees from a common fund in a class action, the Court noted that the amount of recovery reflected using a lodestar calculation can act as a ceiling on the amount of attorney fees awarded from the common fund.<sup>78</sup>

28. If the American Rule were applied here, KCP&L would be responsible for paying its own expenses and costs, would not recover any rate case expense from ratepayers, and would be required to pay the assessed expenses under K.S.A. 66-1502 for expenses of the Commission, its

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<sup>73</sup> *Robinson v. City of Wichita Employees' Retirement Bd. of Trustees*, 291 Kan. 266, 279, 241 P.3d 15, 24 (2010). In contrast, under the “English Rule” the losing party pays the prevailing party’s attorney fees. BLACK’S LAW DICTIONARY, (WEST 8<sup>th</sup> Ed, 2004), p. 570.

<sup>74</sup> 291 Kan. at 279, *citing* 8 Larson Workers’ Compensation Law § 133.01 (“The obligation to bear one’s own legal fees, then, has become established as a necessary evil, which each client must contrive to bear as cheerfully as he or she can.”).

<sup>75</sup> November 22, 2010 Order, pp. 2-3.

<sup>76</sup> K.S.A. 66-1502.

<sup>77</sup> *Shutts v. Phillips Petroleum Co.*, 235 Kan. 195, 679 P.2d 1159 (1984) *aff’d in part, rev’d in part*, 472 U.S. 797 (1985).

<sup>78</sup> *Gigot v. Cities Service Oil Co.*, 241 Kan. 304, 315-19, 737 P.2d 13, 26-28 (1987) (Kansas Supreme Court outlines different approaches for calculating fair and reasonable attorney fees from a common fund in class action suits, including a percentage of the award, weighing and evaluating a number of factors, the lodestar approach, or a combination adjusted for subjective considerations by the court).

Staff and CURB of \$1,422,832. But historically Kansas utilities have been allowed recovery of prudently incurred rate case expense that is just and reasonable as one of the many components making up revenue requirement.<sup>79</sup> Therefore, while recognizing KCP&L would recover no rate case expense under the American Rule, the Commission continues to review the amount to be awarded in this proceeding.

### **B. Percentage of the Award**

29. A factor considered in evaluating whether the requested rate case expense is just and reasonable compares similar cases and the size of the rate case expense award in the context of the overall revenue requirement for the utility. KCP&L invited this comparison with the “Wolf Creek” docket,<sup>80</sup> where utility-owners of the Wolf Creek Nuclear Generating Station sought to include rate case expense in the revenue requirement for that facility to be assessed against ratepayers. KCP&L argued that this case had been compared to the Wolf Creek docket during these proceedings<sup>81</sup> and that, in the Wolf Creek docket, rate case expense was initially estimated to be \$2,078,500, but the actual rate case expense incurred was \$4,719,214, which is more than double the initial estimate. Despite this variance from the initial estimate, the Commission allowed the utility to recover the full amount of its rate case expense from customers.<sup>82</sup> Here, KCP&L argued that the Commission, as it did in the Wolf Creek docket, should allow KCP&L’s requested rate case expense as a reasonable amount to recover from customers even though it exceeds the original estimate of \$2.1 million by over \$5 million.<sup>83</sup>

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<sup>79</sup> *Columbus Telephone Co. v. Kansas Corporation Comm’n*, 31 Kan. App. 2d 828, 835, 75 P.3d 257, 262 (2003).

<sup>80</sup> *Kansas Gas & Elec. Co.*, Consolidated Docket No. 84-KG&E-197-RTS & Docket No. 120,924-U, Order issued Sept. 27, 1985 (Wolf Creek Order).

<sup>81</sup> KCP&L Posthearing Brief, ¶¶ 20-21.

<sup>82</sup> KCP&L Posthearing Brief, ¶ 21, *citing* Wolf Creek Order, pp. 115-16. Although the Wolf Creek Order does not specify, the rate case expense awarded appears to include the assessment of costs for the Commission and its Staff. The Commission notes that CURB had not been created at that time. K.S.A. 66-1222.

<sup>83</sup> KCP&L Posthearing Brief, ¶ 21.

30. We believe it helpful to consider the size of the Wolf Case docket. Parties involved included three utilities (KG&E, KCP&L, and Kansas Electric Power Cooperative), Commission Staff, and numerous intervenors such as the Kansas Attorney General, two public interest associations (Alliance for Liveable Electric Rates and Electric Shock Coalition), the Kansas Independent Oil and Gas Association, a coalition of 12 large industrial customers, a coalition of 10 local government entities, a coalition of 8 municipalities, and several other entities. Public hearings were held in 19 different venues with public testimony given by more than 100 members of the public, hundreds of written public comments were received, and more than 90 witnesses testified during a contentious and complex evidentiary hearing.<sup>84</sup> In spite of KCP&L's urging that the two dockets are comparable, the Commission concludes the instant proceeding did not approach the complexity of the Wolf Creek docket involving a nuclear power plant.

31. Regarding KCP&L's reliance on the Wolf Creek Order to support awarding rate case expense exceeding an initial estimate, the Commission points out that the amount of rate case expense awarded in its November 22, 2010 Order was \$5.6 million, or a little more than twice the \$2.1 that KCP&L initially estimated here. By comparison, the Wolf Creek Order awarded \$4.7 million in rate case expense, also a little more than twice the estimated rate case expense there of \$2.0 million. These awards appear comparable. KCP&L has not explained, through argument or evidence, why it should receive an even more generous award of rate case expense over its original estimate (\$9 million vs. \$2.1 million) than the amount allowed in the Wolf Creek docket compared with the original estimate there (\$4.7 million v. \$2 million).

32. In evaluating whether the requested rate case expense is just and reasonable, the Commission also finds it helpful to compare the rate case expense allowed to be recovered from ratepayers with the overall revenue requirement awarded the utility. In the Wolf Creek docket, the utility (KG&E) requested a revenue requirement of \$144.9 million; the Commission awarded a revenue requirement of \$135 million. Thus, the rate case expense of \$4.7 million awarded in

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<sup>84</sup> Wolf Creek Order, pp. 1-5.

that highly contested docket, involving costs for construction of a nuclear power plant, was approximately 3.4% of the revenue requirement. Here, KCP&L initially requested a revenue requirement of about \$50.8 million; the Commission ultimately awarded a revenue requirement of \$21.8 million, which included an award of \$5.6 million for rate case expense.<sup>85</sup> If the 3.4% awarded in the Wolf Creek docket for rate case expense is applied here to the requested revenue requirement of \$50.8 million, KCP&L would be entitled to rate case expense of \$1.73 million; if the 3.4% awarded in rate case expense in the Wolf Creek docket is applied to the awarded revenue requirement of \$21.8 million here, KCP&L would be entitled to rate case expense of only \$741,000.

33. Analyzing this comparison, the Commission also considers the last litigated rate case before the Commission that involved Westar Energy, Inc., and Kansas Gas & Electric Company (collectively Westar), which is the largest electric public utility in Kansas.<sup>86</sup> Westar's Docket No. 05-WSEE-981-RTS (05-981) was a complex rate case that included 18 intervenors, prefiled written testimony submitted by 44 witnesses, and an evidentiary hearing lasting 13 days. Two attorneys appeared on behalf of Westar.<sup>87</sup> In Docket 05-981, Westar requested a revenue increase totaling over \$84 million; the Commission awarded an overall revenue requirement increase of \$38,797,189.<sup>88</sup> The total rate case expense awarded in Docket 05-981 was \$2,081,610.<sup>89</sup> Thus, rate case expense for that contested docket was approximately 5.4% of the revenue requirement. If the 5.4% awarded in the Westar docket for rate case expense is applied here to the requested revenue requirement of \$50.8 million, KCP&L would be entitled to rate case expense of \$2.74

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<sup>85</sup> November 22, 2011 Order, pp. 91, 95.

<sup>86</sup> Docket No. 05-WSEE-981-RTS, In the Matter of the Applications of Westar Energy, Inc. and Kansas Gas and Electric Company for Approval to Make Certain Changes in Their Charges for Electric Service, *Order on Rate Applications*, filed December 28, 2005 (Westar December 28, 2005 Order).

<sup>87</sup> Westar December 28, 2005 Order, pp. 7-10. Counsel appearing on behalf of Westar included Martin Bregman of Westar and Michael Lennen, who previously served as Chairman of this Commission.

<sup>88</sup> Schedules attached to *Order on Petition For Specific Reconsideration, For the Submission of Additional Evidence and Clarification*, filed February 16, 2006 (Westar February 16, 2006 Order), Schedules.

<sup>89</sup> Docket 05-981, Direct Testimony of Mary Jo Struttman, filed September 9, 2005, as updated for additional expenses based upon the Commission's ruling in Westar February 16, 2006 Order.

million; if the 5.4% awarded in rate case expense in the Westar docket is applied to the awarded revenue requirement of \$21.8 million, KCP&L would be entitled to rate case expense of only \$1,177,200.

34. Comparing this proceeding with the Westar docket, the Commission notes several of the same issues were considered, including rate of return, depreciation, and other complex accounting issues. Admittedly, prudence was not an issue in Westar's case. Yet the experience, reputation, and ability of the lawyers representing KCP&L and Westar were comparable. The Commission finds consideration of rate case expense awarded in another recently litigated rate case proceeding is helpful in determining an amount of rate case expense that is just and reasonable to pass through to a utility's ratepayers. Having considered the percentage of rate case expense compared with the revenue requirement awarded in other litigated rate case proceedings before this Commission, we conclude that KCP&L's request here significantly exceeds the percentage allowed in other proceedings that were at least as complex, and arguably much more complex, than this proceeding with as much at stake in terms of financial risk for the companies involved. The Commission has taken this into account in setting rate case expense for this proceeding.

### **C. KCP&L's Initial Estimate**

35. The amount of rate case expense KCP&L initially estimated (\$2.1 million) differed substantially from the amount it ultimately claimed (\$9 million). Three explanations are possible for this discrepancy: (1) the company's initial estimate was simply wrong and grossly inadequate given the issues raised; (2) the company failed to reasonably manage its rate case expenses to stay within – or even close to – the \$2.1 million estimate; and (3) the company made a good faith, reasonable initial estimate but was surprised by a host of complexities, opposition, and new issues that could not be reasonably anticipated.

36. The Commission concludes little or no control was exercised to match the initial \$2.1 million estimate for rate case expense. In filing its Application, KCP&L estimated its rate case

expense would be \$2.1 million based upon prior other rate cases under KCP&L's Resource Plan.<sup>90</sup> KCP&L Witness Weisensee testified that this estimate was based on rate case expense for Docket 09-246 of \$2.3 million, taking into account that some issues had already been vetted and the number of parties involved.<sup>91</sup> No specific person was assigned the responsibility to monitor or keep overall rate case expense within this budgeted amount.<sup>92</sup> When the estimate was developed, KCP&L knew that the rate case would also require a depreciation study, a class cost of service study, and an allocation study and that the issue of prudence had been deferred from the 09-246 Docket to this proceeding.<sup>93</sup> Downey testified that rate case expense was treated like a storm budget, in which the Company knew monthly what kind of expenses were billed and paid but no overall budget was maintained.<sup>94</sup> By the time he became aware that rate case expense had increased significantly over the stated budget, Downey was not sure the company could ask for more then, noting he was not a procedural expert.<sup>95</sup> Downey did not state whether he asked his advisors about this concern.

37. CURB urged the Commission to limit KCP&L's award to the estimate of \$2.1 million<sup>96</sup> because the Company either knew or should have known that this docket would be difficult when its Application was filed. Crane pointed out that the company "blew through this estimate as if it was written in dust."<sup>97</sup> Crane noted several significant issues, including prudence, were deferred from the prior 09-246 Docket and parties knew depreciation, rate of return, and various other accounting issues would be addressed in this docket.<sup>98</sup>

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<sup>90</sup> CURB Exh. 1, CS-80 Rate Case Expense – KCPL, Summary KS, Rate Case schedule – 2010 Rate Case, Direct Filing. Tr. Vol. 15, p. 3385 (Weisensee); Tr. Vol. 16, p. 3664 (Downey). See also Table of Proceedings, *infra* ¶ 6.

<sup>91</sup> Tr. Vol. 15, pp. 3400-02, 3417-18, 3429 (Weisensee); Weisensee Direct, p. 8; Weisensee Rebuttal, p. 8.

<sup>92</sup> Tr. Vol. 15, pp. 3385-86 (Weisensee); Tr. Vol. 16, pp. 3663-64 (Downey).

<sup>93</sup> Tr. Vol. 15, pp. 3389-92 (Weisensee).

<sup>94</sup> Tr. Vol. 16, pp. 3666-67 (Downey).

<sup>95</sup> Tr. Vol. 16, p. 3668 (Downey).

<sup>96</sup> Crane Direct, p. 24.

<sup>97</sup> Crane Direct, p. 17; Tr. Vol. 16, pp. 3929-32 (Crane).

<sup>98</sup> Tr. Vol. 16, p. 3932 (Crane).

38. The Commission shares Crane's concern that KCP&L made no attempt to keep the parties or the Commission informed "about the level of rate case costs being incurred, why that level differed so dramatically from the claim included in the filing, or why that level of cost was appropriate. Any information provided about rate case expense was only elicited as a result of data requests propounded by other parties in the case or by cross-examination of the Company's witnesses."<sup>99</sup> The Company had an affirmative duty to keep the Commission informed by providing appropriate schedules and competent testimony of "all relevant facts and data pertaining to its business and operations" to assist the Commission in arriving at fair, just, and reasonable rates for both the utility and the public.<sup>100</sup> KCP&L did not meet its obligations under this regulation. If the Commission followed this recommendation by CURB, KCP&L would recover rate case expense of \$2.1 million.

#### **D. CURB Proposal for Sharing Rate Case Expense**

39. If the Commission allows KCP&L to recover rate case expense exceeding its estimated \$2.1 million, CURB Witness Crane proposed using a methodology that would share a utility's directly-incurred rate case costs 50/50 between KCP&L and ratepayers, subject to some reasonable maximum. Under this method, shareholders would fund a portion of rate case expense. CURB argued both shareholders and ratepayers benefit from an incentive for the Company to keep down these costs. Ratepayers benefit by receiving utility service at just and reasonable rates; shareholders benefit from having an opportunity to increase their margins.<sup>101</sup> Crane discussed three options for using a sharing mechanism to ensure ratepayers do not have to pay exorbitant rate case costs, which in her opinion would help level the playing field and balance the interest of shareholders and ratepayers.<sup>102</sup>

40. We are not the only utility commission to struggle with the issue of rate case expense. The Missouri Public Service Commission recently initiated a general investigation of rate case

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<sup>99</sup> Crane Direct, p. 18.

<sup>100</sup> K.A.R. 82-1-231(a).

<sup>101</sup> Crane Direct, pp. 25-26; Tr. Vol. 16, pp. 3934-38.

<sup>102</sup> Crane Direct, pp. 27-29.



expense to explore use of a sharing method, such as the one Crane proposed, or to establish a revenue percentage cap on rate case expense passed to ratepayers.<sup>103</sup> Here, if the amount sought for KCP&L-only rate case expense was divided based upon a 50/50 sharing between shareholders and ratepayers, KCP&L-only rate case expense would be approximately \$3.8 million. The Commission has considered this proposal but does not adopt a 50/50 sharing of rate case expense as a matter of policy. Although we recognize our decision apportions responsibility for rate case expenses between ratepayers and shareholders, we decline to adopt a general policy that formally apportions rate case expense as CURB suggests.

#### **E. CURB Alternative Proposal for Calculating Rate Case Expense**

41. CURB Witness Smith presented an alternative proposal that adjusted specific items of rate case expense to remove excessive, duplicative, unreasonable and inadequately documented charges. He discussed individual instances that, in his opinion, reflected unreasonable, excessive or questionable items included in KCP&L's rate case claim, dividing his analysis among (1) Overall Legal Fee Concerns,<sup>104</sup> (2) Specific Concerns Regarding Legal Fees and Expenses Claimed by KCPL,<sup>105</sup> and (3) KCPL Consultant Charges.<sup>106</sup> Under Smith's proposal, the allowance for KCP&L's rate case expense should be limited to \$4.913 million, including \$1.423 million for the Commission, its Staff and CURB costs. The amount of \$4.913 million included approximately \$1.9 million for addressing Iatan Unit 2 prudence issues and \$3 million "for other 'normal' rate case costs, including the KCC and CURB assessment."<sup>107</sup> Also, Smith proposed a cost recovery period of ten years for rate case expense addressing the Iatan Unit 2 prudence issue, which would produce an annual allowance of approximately \$190,000 per year, and a cost recovery period over four years, for an annual allowance of approximately \$754,000. Thus, the

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<sup>103</sup> In the Matter of a Working File to Consider Changes to Commission Rules and Practices Regarding Rate Case Expense, Missouri Public Service Commission File No. AW-2011-0330, *Order Directing Staff to Investigate and Opening a Repository File*, issued April 27, 2011.

<sup>104</sup> Smith Direct, pp. 17-19.

<sup>105</sup> Smith Direct, pp. 19-30.

<sup>106</sup> Smith Direct, pp. 31-38.

<sup>107</sup> Smith Direct, p. 8; Schedule RCS-1, Schedule 1.

total annual cost recovery would be approximately \$944,000 over four years and then \$190,000 over an additional six years.<sup>108</sup>

42. The Commission has considered Smith's proposal removing charges he found excessive, duplicative, unreasonable and inadequately documented; we have also considered Smith's proposal regarding cost recovery for rate case expense. We decline to accept either proposal; however, we have considered Smith's analysis of individual issues among the factors we have taken into account in reaching our decision.

#### **F. Lodestar Calculation**

43. By far the largest portion of rate case expense requested in this proceeding is for lawyers' fees. The record before us indicates that 47 timekeepers (including attorneys, paralegals, and consultants) associated with six law firms billed 16,407 hours to this case.<sup>109</sup> In Kansas, not only does the rate case expense need to be reasonable, but also the attorney fees themselves must be reasonable.<sup>110</sup> To arrive at a reasonable attorney fee, Kansas courts commonly multiply a reasonable number of hours worked by a reasonable hourly rate; this gives the court a "lodestar amount" that may be adjusted further by other factors set out in Rule 1.5(a).<sup>111</sup> If the eight factors of Rule 1.5 are considered in initially making the lodestar calculation, further adjustments may not be needed.<sup>112</sup> Lodestar is defined as: "A reasonable amount of attorney's fees in a given case, [usually] calculated by multiplying a reasonable number of hours worked by the prevailing hourly rate in the community for similar work[.]"<sup>113</sup> Because so much of the rate case expense here is attributable to attorney fees, the Commission will consider the lodestar calculation in determining an appropriate amount to award for this proceeding. For guidance, the Commission has reviewed how district courts use the lodestar calculation. Consistently, those courts required each lawyer

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<sup>108</sup> Smith Direct, p. 9; Schedule RCS-1, Schedule 1.

<sup>109</sup> Attachment A, p. 2.

<sup>110</sup> Rule 1.5(a).

<sup>111</sup> *Sheldon*, 237 F.Supp.2d at 1274.

<sup>112</sup> 237 F.Supp. at 1274.

<sup>113</sup> Black's Law Dictionary, (WEST 8th Ed., 2008), p. 960.

for whom fees were sought to provide meticulous, contemporaneous time records documenting the time allotted to specific tasks.

44. Using a lodestar analysis, the Commission undertook an extensive analysis of invoices submitted by these timekeepers to make just and reasonable adjustments to these billings. A problem we consistently encountered in reviewing records submitted by KCP&L was the use of block billing. This was particularly problematic in trying to sort out what attorney work was duplicated, both within a law firm and among attorneys at several law firms. We found block billing was used for time expended during a day even if multiple tasks were performed. For example, Cafer billed 8.5 hours on June 24, 2010, for the following activities: "Preparation for CCA witness sessions; conference call with Schiff; conference call with clients re: accounting rebuttal; review draft of DRs; draft letter and serve DRs on staff; draft and serve follow-up letter; emails with clients and consultants; obtain and forward confidential version of Drabinski's revised testimony; draft letter for second set of DRs."<sup>114</sup> Block billing was even used when work had to be billed to more than one jurisdiction<sup>115</sup> or involved issues not included in this rate case proceeding.<sup>116</sup> When block billing is used, the reviewer cannot decipher how much time is spent on a particular task, which is necessary to determine whether tasks are duplicated with respect to that activity. For example, we cannot decipher what amount of 8.5 hours Cafer billed for June 24, 2010, was spent preparing for the CCA session.<sup>117</sup> Attorneys clearly know how to record separate time for specific projects on a daily basis. Anne Callenbach of Polsinelli Shughart billed her daily time using a granular identification of tasks; on June 22, 2011, Callenbach billed a total of 7.90

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<sup>114</sup> KCP&L Exh. 2, Weisensee CD, Weisensee Workpapers, Cafer.pdf, Invoice No. 01-01-10, p. 2.

<sup>115</sup> Tr. Vol. 15, pp. 3537-45 (Polsinelli Shughart billings included work on MO Public Service Commission proceedings), 3561-63 (Cafer Law and Schiff Hardin bills for attending MO PSC hearing), 3567-69 (Schiff Hardin billings for work in other jurisdiction); CURB Exh. 21 (Polsinelli Shughart bills), Exh. 26 (Cafer and Schiff Hardin bills), and Exh. 28 (Schiff Hardin bills).

<sup>116</sup> Tr. Vol. 15, pp. 3550-54 (Cafer Law billings included research on predetermination issue); CURB Exh 24 (Cafer Law bills).

<sup>117</sup> Tr. Vol. 17, pp. 4100 (Harden), and 4155-56, 4165 (McClanahan).

hours by dividing her time into 5 separate notations.<sup>118</sup> Unfortunately, the Commission has found no other attorney invoices that follow this example.

45. KCP&L did not consider block billing problematic. Rush testified that no duplication of billing occurred in this case, which we find borders on stating a deliberate falsehood but will deem to be a sign of indifference. Rush stated that each attorney had individual assignments and that, even if more than one attorney read the same witness testimony, each reading was needed to understand a particular aspect of an issue assigned to each attorney.<sup>119</sup> Rush asserted that KCP&L questioned law firms when attorneys billed 13 to 17 hours a day to determine if these were legitimate hours; but no correspondence or other written documentation confirms that KCP&L challenged any of these billings.<sup>120</sup>

46. We discuss this problem with block billing in more detail below. For future proceedings, the Commission cautions parties that any request for attorney fees to be included in rate case expense must provide information complying with Rule 1.5, by which attorneys must describe their time allotted to specific issues or tasks “by submitting meticulous, contemporaneous time records that reveal, for each lawyer for whom fees are sought, all hours for which compensation is requested and how those hours were allotted to specific tasks.”<sup>121</sup>

### **1. Number of reasonable attorney hours.**

47. The first step in the lodestar calculation is determining a reasonable number of hours spent by counsel for the party seeking recovery of attorney fees. Here KCP&L has the burden to establish, for each lawyer for whom it seeks to recover fees, that meticulous, contemporaneous time records have been maintained documenting all hours for which compensation is requested and documenting how those hours were allotted to specific tasks.<sup>122</sup> If time records are “sloppy

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<sup>118</sup> CURB Exh. 14, p. 9. The same invoice is at KCP&L Exh. 2, Weisensee CD, Weisensee Workpapers, Polsinelli.pdf, Professional Services Through 6/30/10, p. 9. See Tr. Vol. 16, pp. 378-80 (Rush); Staff Exh. JDM-2, Polsinelli Invoices ending April 30, 2010, pp 6-8.

<sup>119</sup> Tr. Vol. 16, pp. 3747-48 (Rush).

<sup>120</sup> Tr. Vol. 16, pp. 3736-37 (Rush).

<sup>121</sup> *Case*, 157 F.3d at 1250. Cf., *Rural Telephone*, November 2001 Order, ¶¶ 27-32.

<sup>122</sup> 157 F.3d at 1250.

and imprecise” and do not document adequately how the attorney utilized large blocks of time, then the Commission is justified in reducing the reasonable number of hours.<sup>123</sup> The Commission may reject “reconstructed” time records.<sup>124</sup> Also, the Commission may reject duplication arising from more than one attorney doing the job of one attorney. An applicant for attorney fees must exercise “billing judgment” by “winnowing the hours actually expended down to the hours reasonably expended.”<sup>125</sup> An attorney is not allowed to recover fees from an adversary that could not be billed to the client; such fees are presumptively unreasonable.<sup>126</sup> Finally, overall hours expended on each task must be considered to determine if they are reasonable; the number of reasonable hours may be reduced by hours that are “unnecessary, irrelevant and duplicative.”<sup>127</sup>

48. Summary of Hourly Fees in Attachment A. The Summary of Hourly Fees from both attorneys and consultants set out in Attachment A to this Order is drawn from schedules Weisensee attached to his direct testimony.<sup>128</sup> In this discussion, we focus on hours attributable to attorney fees and later discuss hours attributable to consultants. The Summary of Hourly Fees reflects that KCP&L seeks to recover rate case expense reflecting 16,407.02 hours of work by timekeepers at law firms,<sup>129</sup> arguing these hours were justified by the complexity, number, and nature of issues raised in this docket.

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<sup>123</sup> 157 F.3d at 1250.

<sup>124</sup> *Shrout v. Holmes*, 2001 WL 980238, at 2 (D.Kan., Aug. 10, 2001)(two-thirds of billing hours disallowed because attorney did not keep contemporaneous time records).

<sup>125</sup> 237 F. Supp. 2d at 1275.

<sup>126</sup> 157 F.3d at 1250.

<sup>127</sup> *Carter v. Sedgwick County, Kan.*, 36 F.3d 952, 956 (10<sup>th</sup> Cir. 1994). See *Case*, 157 F.3d at 1250 (more important than testimony of expert witnesses in deciding reasonableness of hours billed is the court’s discretionary determination of how many hours, in its experience, should have been expended on the specific case, given the maneuverings of each side and the complexity of the facts, law, and litigation).

<sup>128</sup> Weisensee Direct, Schedules JPW2010-11 through JPW2010-25.

<sup>129</sup> The Commission is astonished, if not shocked, at the total number of billable man-hours claimed by the company as reimbursable and appropriate to be passed through to ratepayers. Basic math demonstrates the total hours equates to 7.95 years of billable work, assuming no vacation and a 40-hour work week without a break, and, as noted elsewhere, *infra*, ¶ 95, one of these law firms is already recovering in excess of \$20 million for its work during the construction management phase of the Iatan project.

49. We will not allow KCP&L to recover rate case expense for services provided by two of the six law firms listed, Duane Morris and Morgan Lewis. In the November 22, 2010 Order, we denied recovery in rate case expense for work done by these law firms because the hours billed duplicated work performed by other attorneys participating in this proceeding and evidence has not established that their work was actually necessary and essential to proper representation of KCP&L in this proceeding.<sup>130</sup> No evidence presented on reconsideration has changed our minds regarding this decision. A total of 600 hours is listed in the Summary for work by attorneys at these two firms.<sup>131</sup>

50. Having reviewed the record before us, we disallow all hours billed by attorneys at SNR Denton because KCP&L has not provided evidence supporting inclusion of these charges in rate case expense for this docket.<sup>132</sup> Billings for Steiner do not attempt to give meticulous, contemporaneous descriptions of work performed or allot time to specific tasks related to this docket. Apparently KCP&L had an unwritten understanding with SNR Denton regarding how Steiner's hours would be estimated and divided among KCP&L's jurisdictions, without requiring actual, contemporaneous records of work performed on this docket.<sup>133</sup> The 144.18 hours billed for Steiner are disallowed. Also, KCP&L offered no evidence to explain why an additional 19.7 hours billed by SNR Denton should be allowed. This time duplicated work by other outside attorneys and will not be allowed as rate case expense.

51. For us to determine a reasonable number of attorney hours to perform a lodestar calculation, hours billed by non-attorney timekeepers at law firms must be removed. But KCP&L's evidence did not identify which timekeepers were attorneys or why fees for non-attorneys at law firms should be recovered as rate case expense. We will only include hours

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<sup>130</sup> November 22, 2010 Order, p. 93; *Case*, 157 F.3d at 1252.

<sup>131</sup> Duane Morris billed 584.48 hours, and Morgan Lewis 159.18 hours. The actual total is 599.66, which we round to 600.

<sup>132</sup> SNR Denton (formerly Sonnenschein Nath & Rosenthal) billed hours totaling 163.88, which we round to 164 hours.

<sup>133</sup> Tr. Vol. 16, pp. 3782-84 (Rush); CURB Exh. 5, 6, and 7. Rush admitted that nothing in the record confirmed that Steiner actually devoted 25% of his time to the Kansas rate case when he was at SNR Denton. Tr. Vol. 16, p. 3784 (Rush).

clearly attributable to attorneys in determining reasonable attorney hours. Based upon our review of invoices and bills from Schiff Hardin, we conclude nine timekeepers are attorneys — Roberts, Okizaki, Gould, Schermer, Hitchcock, Kolton, Montgomery, Rowe and Markey; these nine attorneys billed a total of 4,549.70 hours. Invoices and hours billed suggest four Schiff Hardin attorneys were primarily involved this proceeding: Roberts, Okizaki, Gould and Schermer.

52. A review of invoices and bills from Polsinelli Shughart indicate the following are attorneys: Caro, Callenbach, Kane, Hagedorn, Sear, Willman, Stohs, Breer, Rupp, Morgan, and Sneed; these 11 timekeepers billed a total of 5,298 hours. Invoices and hours billed indicate four attorneys were primarily involved in this proceeding: Caro, Callenbach, Kane and Hagedorn.

53. In reviewing the Summary of Hourly Fees to calculate a reasonable number of attorney hours, the Commission has excluded all hours billed by attorneys at law firms Duane Morris, Morgan Lewis, and SNR Denton. We note that Cafer Law listed hours for only one attorney, who billed 1,639 hours. Only hours billed by the 9 attorneys at Schiff Hardin (4,550 hours), the 11 attorneys at Polsinelli Shughart (5,298 hours), and the one attorney at Cafer Law (1,639 hours) will be considered in determining a reasonable number of attorney hours for the lodestar calculation. The combined total is 11,487 hours.

54. Exercise of billing adjustment by individual law firms. The Commission notes that evidence in the record does not reflect that any of the law firms involved in this proceeding made a billing adjustment or that KCP&L made any effort to require them to do so. Nowhere is an adjustment seen for lost time, duplication of services, or time spent familiarizing oneself with the law. With regard to Polsinelli Shughart, at the hearing, KCP&L pointed out an occasional invoice from Polsinelli Shughart that indicated “No Charge” for a specific item that involved more than one attorney and clearly duplicated services.<sup>134</sup> But a review of hundreds of pages of invoices from Polsinelli Shughart does not show a consistent effort to adjust billing to ensure that the work of attorneys in the firm was not duplicated in billing or to account for those occasions when

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<sup>134</sup> McClanahan Direct, Exh. JDM-1, Polsinelli Shughart December 2009 Invoice # 687731, pp. 2-8.

duplication is unavoidable, such as when a new attorney is brought into the case and must “get up to speed” on the facts and the law. In fact, additional examples of duplicate billing were identified at the hearing.<sup>135</sup> In making this adjustment, we note that KCP&L’s decision to involve so many law firms required numerous attorneys to get “up to speed” on the issues, including each attorney needing to become familiar with this general area of law. Acquiring such background knowledge should have been absorbed by the law firms or by KCP&L in light of its decision to duplicate these efforts.<sup>136</sup> Based upon its review of invoices and billing statements, the Commission concludes that it is just and reasonable to reduce the 5,298 attorney hours billed by the 11 attorneys at Polsinelli Shughart by 10% to make some accounting for duplication of work, lost time, and coming up to speed by attorneys at this firm.<sup>137</sup> This adjustment brings reasonable attorney hours for Polsinelli Shughart to 4,768 hours.

55. More alarming was the duplication seen in reviewing Schiff Hardin invoices and billing statements. Schiff Hardin invoices show a constant and repetitive duplication of effort by the four primary attorneys involved in this proceeding. All four attorneys consistently billed for drafting, and repeatedly redrafting, the same direct testimony, which was filed with KCP&L’s Application. Testimony they drafted involved several witnesses that KCP&L has assured the Commission were top experts in their respective fields.<sup>138</sup> By the time the Application was filed on December 17, 2009, these four attorneys had already billed 830 hours and over \$315,000 in fees.<sup>139</sup> The evidence shows that Schiff Hardin made no billing adjustments here. No evidence discussed why such duplication was necessary to draft testimony for expert witnesses or to perform similar work. Throughout these proceeding, Schiff Hardin brought in other firm attorneys but made no adjustment for the time needed to acquire “background” information about this area of law or this proceedings. Also, Schiff Hardin attorneys drafted and redrafted testimony

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<sup>135</sup> Tr. Vol. 15, pp. 3537-38 (Weisensee); CURB Exh. 19 (Polsinelli Shughart August 2009 invoice).

<sup>136</sup> *Case*, 157 F.3d at 1253.

<sup>137</sup> *Kansas Penn Gaming, LLC v. HV Properties of Kansas, LLC*, Case No. 08-4111-RDR, Memorandum and Order, Slip Op. filed May 18, 2011, at p. 15.

<sup>138</sup> CURB Exh. 16 and 17.

<sup>139</sup> Attachment A, Summary of Hourly Fees, p. 2.



as if the attorneys and witnesses were unfamiliar with the Iatan Project or with KCP&L. Based upon the clear duplication of effort by attorneys at Schiff Hardin and lack of any billing adjustment by Schiff Hardin, the Commission concludes that it is just and reasonable to make a billing adjustment for Schiff Hardin attorney hours. In light of the unchecked billings by this firm, we reduce attorney hours for Schiff Hardin by 30% to remove duplication of work by these attorneys.<sup>140</sup> We calculate 4,550 hours billed by Schiff Hardin attorneys reduced by 30%, or 1,365 hours, results in a total of 3,185 hours.

56. As with the other firms, Cafer Law made no billing adjustment to account for background research needed to become familiar with the general area of law involved in the numerous issues presented in this case.<sup>141</sup> The unadjusted invoices would suggest that 100% of time billed reflected productive time, which seems contrary to real-world experience. The Commission concludes that it is just and reasonable to make a modest 5% adjustment to reduce the 1,639 hours billed by Cafer Law, reducing its billable hours by 82 hours for a total of 1,557 attorney hours.

57. Exercising billing judgment regarding attorney hours billed by Polsinelli Shughart, by Schiff Hardin, and by Cafer Law does not eliminate the problem of duplicate billing. Adding together the adjusted attorney hours for Polsinelli Shughart (4,768 hours), Schiff Hardin (3,185 hours), and Cafer Law (1,557 hours), we calculate a total of 9,510 attorney hours. But a review of the record in this proceeding establishes an obvious overlap of work among attorneys at Cafer Law, Polsinelli Shughart, and Schiff Hardin law firms, which we address next.

58. Billing Adjustments for Work Done by Multiple Law Firms. The Commissioners, all of whom are lawyers, find it remarkable and evidence of the unreasonable nature of the claimed expense that among the 34 attorneys working for six law firms and billing 12,395 attorney hours in this case, none of them made any adjustments to their bills. No adjustments were made for unproductive time, for duplication of efforts among lawyers in the same firm, or

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<sup>140</sup> *Kansas Penn Gaming*, at p. 15.

<sup>141</sup> 157 F.3d at 1253.

for duplication of efforts among lawyers working in different law firms. The implication is that the work was 100% productive and non-duplicative. The Commission has made an adjustment to attempt to account for duplication in billings and to account for background research on issues by attorneys at Polsinelli Shughart, by attorneys at Schiff Hardin, and by the attorney at Cafer Law. A cursory review of invoices submitted by all the outside law firms in this proceeding, including testimony submitted by KCP&L's witnesses, and working papers contained in KCP&L Exhibit 2 and responses to DRs 554 & 555<sup>142</sup> confirms that no billing adjustment was made overall in relation to rate case expense requested for this proceeding. In calculating reasonable attorney hours, the Commission has already excluded hours billed by attorneys from Duane Morris, Morgan Lewis, and SNR Denton due to the lack of evidence to support recovering for billings by these firms in rate case expense. Identifying duplication of attorney work among law firms is tedious and requires laborious review of invoices that was made impossible here because attorneys billed work using block descriptions rather than detailed descriptions of work efforts. Two areas in particular illustrate this problem.

59. First, we consider the time spent by KCP&L's attorneys refuting testimony of Staff Witness Drabinski on prudence. KCP&L Witness Downey, who was President and Chief Operating Officer at KCP&L during implementation of the Resource Plan and the 2010 Evidentiary Hearing, noted that the primary purpose of the 10-415 Docket was to address

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<sup>142</sup> Two CDs are included in the administrative record of the proceeding. One CD contains Staff's DRs 554 and 555 and KCP&L Responses to these DRs. This CD was made a part of the record in the November 22, 2010 Order, p. 89. Because the CD had not yet been submitted, the Commission directed Staff to file a copy in its January 6, 2011 Order, ¶ 79, which was done on January 13, 2011. Staff's DRs 554 and 555 and KCP&L's overview responses are filed as Attachment B to Staff's Notice of Filing of Revised Schedules and Documents as Requested by the Commission; the CD containing KCP&L's Responses to DRs 554 and 555 are submitted as Attachment C to Staff's Notice. To help clarify what is contained in the administrative record, we note that Staff Witness Bill Baldry attached two CDs to his Direct Testimony that also has this information; one CD contains Staff's DR 554 and KCP&L's Responses, the other CD contains Staff's DR 555 and KCP&L's Responses. In addition to the CD with DRs 554 and 555, a second CD, which includes Weisensee's workpapers and additional invoices, was filed as KCP&L Exh. 2 in the September 2011 evidentiary hearing and is referred to throughout this Order as KCP&L Exhibit 2. See *infra*, ¶ 14. As did the parties, we refer to the CD containing Weisensee's workpapers as KPC&L Exh. 2; we refer to the CD containing DRs 554 and 555 and Responses as DRs 554 and 555. See Tr. Vol. 17, pp. 3969-70.

prudence so that KCP&L could recover its investment in the Iatan Project.<sup>143</sup> He testified here that, after Drabinski filed his prudence testimony, the Company “made management decisions strategically to significantly increase our effort in the area,” noting this was “a 2 billion dollar bet” on the investment in Iatan.<sup>144</sup> KCP&L concluded it was “absolutely mission critical to the Company to explain, defend and validate all of the work we had done over the past 5 years, so, yes, we did ramp up dramatically because we felt there was a fundamental risk to the Company, to its customers and to all the other stakeholders who were involved in this decision.”<sup>145</sup> Attorneys working on this proceeding obviously took to heart Downey’s directive that made discrediting Drabinski’s testimony on prudence “absolutely mission critical.”

60. CURB Witness Harden examined attorney hours billed after Drabinski’s direct testimony was filed on June 15, 2010.<sup>146</sup> Harden reviewed attorney invoices covering the 20 calendar days from June 10 to 30, 2010, looking for references to reviewing, analyzing, or discussing Drabinski’s testimony. She calculated 17 different timekeepers from four law firms reported 974.7 billable hours during these 20 days, totaling \$351,843.50 in fees.<sup>147</sup> Harden’s calculations included 20.8 hours for Duane Morris, which has already been disallowed, and 23.5 hours for O. Glover of Schiff Hardin, who does not appear to be an attorney.<sup>148</sup> After deducting 44.3 hours for those two adjustments, attorney hours billed for work on Drabinski’s testimony during this 20-day period is 930 hours. In reviewing daily descriptions reported in attorney invoices, Harden found block-form descriptions that included work on other tasks as well as

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<sup>143</sup> Downey Direct, p. 2.

<sup>144</sup> Tr. Vol. 16, p. 3667 (Downey).

<sup>145</sup> Tr. Vol. 16, pp. 3667-68 (Downey).

<sup>146</sup> The Drabinski testimony filed June 15, 2010, was treated as confidential. Due to concern about confidential information contained in Drabinski’s Direct Testimony, a draft of at least portions of this testimony was given to attorneys representing KCP&L as early as June 10, 2011. See CURB Exh. 15, pp. 1, 2, and 6 (pages of invoices from Cafer Law, Schiff Hardin, and Polsinelli Shughart, respectively). A redacted version of Drabinski Direct Testimony was filed on June 24, 2011.

<sup>147</sup> Harden Direct, p. 4, and Exh. SMH-1.

<sup>148</sup> Harden Direct, Exh. SMH-1.

reviewing Drabinski's testimony. As a result, Harden testified she could not pinpoint exactly how many hours were devoted to reviewing this testimony during those 20 days.<sup>149</sup>

61. To illustrate the problem with block billing, Weisensee was given CURB Exhibit 15 at the hearing; this exhibit contains invoices for June of 2010 from Cafer Law (p. 1), Schiff Hardin (pp. 2-3), Duane Morris (pp. 4-5), Polsinelli Shughart (pp. 6, 8) and Charles Whitney at Duane Morris (p. 7).<sup>150</sup> These pages show that timekeepers at Cafer Law (Cafer), at Schiff Hardin (Roberts, Okizaki, Schermer, Gould, and Glover), at Duane Morris (Bates, Cook and Whitney), and at Polsinelli Shughart (Kane, Caro, Hagedorn and Callenbach) used various descriptions for the task of reviewing Drabinski's testimony. For example, Roberts of Schiff Hardin credited four hours on 6/11/10 for the following work: "Review of Walter Drabinski's testimony; confer with Carrie Okizaki and Eric Gould regarding same and CCA process for Dan Meyer and myself; telephone conference with Jerry Reynolds regarding Drabinski's testimony."<sup>151</sup> This invoice shows that four other timekeepers at Schiff Hardin also reviewed and analyzed Drabinski's testimony that day, as well as other work resulting in billing these hours: Okizaki, 7.75 hours; Schermer, 2.25 hours; Gould, 8.75 hours; and Glover 4.75 hours. Like Harden, this Commission has no way to determine what portion of the 27.5 hours billed to KCP&L that day by Schiff Hardin was spent reviewing Drabinski's testimony versus doing other tasks. This problem is compounded by multiple timekeepers at multiple firms recording multiple events in block billing during the course this proceeding.

62. In addition to Harden's review of billings for 20 days in June 2010, invoices show that during June and July 2010, Cafer Law billed 314 hours, Polsinelli Shughart billed 1,162 hours, and Schiff Hardin billed 4,051.60 hours; this is a total of 5,530 hours over this two-month period.<sup>152</sup> No evidence suggests any law firm or KCP&L management in filing its request for rate case expense made a billing adjustment in any way to account for duplication of effort with

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<sup>149</sup> Harden Direct, pp. 4-5, and Exh. SMH-1.

<sup>150</sup> Tr. Vol. 15, pp. 3520-27, and CURB Exh. 15, Portions of Law Firm Invoices for June 2010.

<sup>151</sup> CURB Exh. 15, Aug. 31, 2010 Invoice for Schiff Hardin, p. 6.

<sup>152</sup> Attachment A, pp. 1-2.

regard to attorney review of Drabinski's testimony. Much of this work was claimed to focus on developing prefiled rebuttal testimony or to be in response to prefiled testimony of witnesses, particularly Drabinski. The Commission, based on our experience as lawyers and in presiding over hearings before this agency, finds it is unreasonable to conclude that rebutting testimony of a single witness (Drabinski) and a single issue (prudence) is such a complex legal exercise that it requires the effort of 17 timekeepers in four law firms billing almost 1,000 hours.<sup>153</sup>

63. The Commission understands KCP&L wanted to challenge and rebut Drabinski's testimony criticizing management's handling of the Iatan Project, but KCP&L made the management decision to ramp up significantly to meet this challenge without regard for cost. Now KCP&L asks us to require ratepayers to pay the entire expense for management's decision to "ramp up significantly" because management decided it was "absolutely mission critical . . . to explain, defend and validate all of the work [management] had done over the past 5 years."<sup>154</sup> While challenging and rebutting testimony is important in any rate case, the Commission expects law firms to exercise judgment with regard to fees that will be passed through to ratepayers, just as a law firm does for clients directly represented by the firm. Because neither the firms nor the Company make adjustments in billings, the Commission finds it just and reasonable to reduce the reasonable number of attorney hours by 310 hours, or approximately one-third of the hours Harden attributed to working on Drabinski's testimony during June 2010. The Commission deducts 310 hours from the 9,510 attorney hours, which totals 9,200 attorney hours.

64. A second example of duplicate attorney work among law firms is witness training. In its November 22, 2010 Order, the Commission denied KCP&L's request to include billings for the Communications Counsel of America (CCA) in rate case expense.<sup>155</sup> The Commission found preparation of witnesses is routinely part of the services attorneys perform before a hearing and, in light of the numerous capable attorneys hired to litigate this proceeding, the Commission

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<sup>153</sup> Attachment A, pp. 1-2.

<sup>154</sup> Tr. Vol. 16, pp. 3667-68 (Downey).

<sup>155</sup> November 22, 2010 Order, p. 92.

disallowed rate case expense for CCA as duplicative.<sup>156</sup> KCP&L urged the Commission to reconsider its decision disallowing CCA expenses and offered additional evidence to support their recovery. Before discussing the duplication of attorney work connected with the CCA sessions, we address KCP&L's argument that expenses for CCA should be allowed as rate case expense.

65. The Duane Morris law firm hired CCA "to assist Duane Morris in giving legal advice to KCP&L with respect to certain aspects of the Iatan Projects."<sup>157</sup> This Consulting Agreement fails to define what professional services CCA will provide to Duane Morris in advising KCP&L, but it discusses fees "to cancel or reschedule a seminar."<sup>158</sup> CCA expenses "for sessions" were billed to KCP&L c/o Albert Bates, Jr., at the Duane Morris law firm; no hourly rate is shown.<sup>159</sup> Evidence shows CCA was retained to provide Witness Development Skills Labs for this rate case on December 9, 2009, well before Drabinski filed his testimony on prudence. Invoices from CCA indicate three Witness Development Skills Labs were conducted during 2010: Phase I for three days, June 7-10, with 5-8 participants and 2 consultants; Condensed Phase I for two days, June 30-July 1, with 2 participants and 1 consultant; and Phase II for 2.5 days on July 12-14, for 9-12 participants and 3 consultants.<sup>160</sup> The total amount KCP&L asks to be included as rate case expense for CCA is \$102,997.45.<sup>161</sup>

66. Evidence KCP&L has offered does not change the Commission's decision to disallow expenses for CCA in rate case expense. While witness preparation might be valuable for company employees, training for outside expert consultants and lawyers is an inappropriate expense to be borne by ratepayers. The fundamental reason a company hires outside consultants, experts, and specialist lawyers is the skill and training those individuals already possess to do their jobs. Moreover, the outside expert or lawyer retains the intellectual capital associated with

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<sup>156</sup> November 22, 2010 Order, p. 92, citing *Sheila A. v. Whiteman*, 259 Kan. 549, 568-69, 913 P.2d 181 (1996).

<sup>157</sup> KCP&L Exh. 1, p. 5.

<sup>158</sup> KCP&L Exh. 1, p. 6.

<sup>159</sup> Tr. Vol. 17, pp. 3969-71 (Weisensee); Weisensee Direct, Schedule JPW2010-24.

<sup>160</sup> KCP&L Exh. 2, Weisensee Workpapers, CCA.pdf, pp. 1-10.

<sup>161</sup> Weisensee Direct, Schedule JPW2010-10 and Schedule JPW2010-24.

such training and is unjustly enriched by receiving it at ratepayer expense. The Commission finds it inappropriate for KCP&L to ask its ratepayers to bear the expense of training outside, well-paid expert witnesses and experienced attorneys. While KCP&L management can decide to incur this expense, the Commission will not allow recovery for CCA seminars from ratepayers and reaffirms its decision denying recovery of the CCA fees and expenses in rate case expense.

67. The problem of recovery for CCA fees and expenses is exacerbated by billing time and expenses by outside counsel and witnesses who attended the CCA training sessions. In reviewing the evidence presented in this proceeding, the Commission realized that merely disallowing the bill for CCA services does not address the duplication of billings by those participating in CCA sessions. A review of attorney invoices quickly reveals that the CCA sessions were not limited to training lay witnesses. The June 2010 invoice for the Cafer Law shows Cafer devoted six days to preparing for and attending CCA training, a total of 54.25 hours in one week. Then, on June 29-30, 2010, Cafer billed an additional 16.25 hours to travel to and prepare for CCA training in Chicago and to “attend CCA training for Meyers and Roberts.”<sup>162</sup> Expenses of \$1,739 for attending these two seminars were also listed in her invoice. Had Cafer been the only attorney preparing for and attending the CCA sessions, perhaps including that cost in rate case expense could have been justified. But invoices from Polsinelli Shughart<sup>163</sup> and Schiff Hardin<sup>164</sup> reflect that attorneys from those law firms also prepared for and attended these sessions.

68. CURB Witness Harden looked at the expense of CCA training. She accumulated hours billed by attorneys to prepare for and attend CCA sessions for four law firms: Cafer Law, Polsinelli Shughart, Schiff Hardin, and SNR Denton. She estimated the total charges for this training, including CCA and law firm charges, was over \$410,000. In Exhibit SMH-4, Harden

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<sup>162</sup> KCP&L Exh. 2, Weisensee Workpapers, Cafer FINAL.pdf, Cafer Statement July 1, 2001, Invoice No. 070110, pp. 2-3.

<sup>163</sup> KCP&L Exh. 2, Weisensee Workpapers, Polsinelli.pdf, Invoice No. 731115 for June 2010, pp. 2-5, 11-14.

<sup>164</sup> KCP&L Exh. 2, Weisensee Workpapers, Schiff-Services, June\_1\_2010\_to\_September\_30\_2010.pdf, Invoice No. 1509969, pp. 2-11, 26-33.

listed the nine witnesses trained in the CCA sessions: Downey, Heidtbrink, Davis, Bell, Archibald, Giles, Roberts, Blanc and Meyer.<sup>165</sup> Assuming these figures, we note the average cost to train each witness was \$45,000 per witness for each of the nine witnesses. The Commission concludes that this amount and work effort by consultants is not prudently incurred and it would be neither just nor reasonable to expect ratepayers to bear such costs.

69. The Commission has already deducted hours attributable to SNR Denton in calculating reasonable attorney hours. After deducting SNR Denton's hours from the total reached by Harden, attorneys at the other three firms billed 875 attorney hours to prepare for and attend CCA training. The Commission further notes that the hours billed include the most experienced attorneys in KCP&L's legal team -- Cafer, Caro, Roberts, and Okizaki. Presumably the hourly rate for these attorneys already takes into account their experience, prior training, and success in working with witnesses. Once again, neither the law firms nor KCP&L made any billing adjustment for the hours incurred preparing for and attending the CCA training sessions. While KCP&L management may decide specialized training for witnesses was appropriate to prepare its employees as well as hired consultants and attorneys for hearing, we find no evidence suggests this training was actually necessary or essential for KCPL to present its case here. The Commission concludes the decision to employ CCA to train witnesses, outside counsel and hired experts for this proceeding was unreasonable and imprudent. Having reviewed the evidence, and taking into account the experience and knowledge of the attorneys involved here, the Commission concludes that it is just and reasonable to reduce by 875 hours the total number of hours to calculate reasonable attorney hours. This results in a total of 8,325 reasonable attorney hours.

70. Billing Errors. During the hearing, it became apparent that parties were still identifying errors in invoices and billing statements submitted by law firms.<sup>166</sup> The Commission understands that, due to the hundreds of invoices submitted and reviewed in this proceeding,

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<sup>165</sup> Harden Direct, p. 18, Exh. SMH-4. See Tr. Vol. 17, p. 4021 (Weisensee) (listing witnesses trained at CCA sessions).

<sup>166</sup> Tr. Vol. 15, pp. 3532-69, discussing CURB Exh. 17 through Exh. 28 (Weisensee).



errors will be found. But once again, no adjustments were made to the invoices to account for billing errors. The presumption presented to the Commission was that for more than 16,000 billable hours of six law firms, none of it had any errors. During the hearing, CURB identified numerous billing errors when questioning Weisensee. Identical billings for the same service by the same timekeeper were pointed out in Schiff Hardin billings.<sup>167</sup> Billings by Polsinelli Shughart showed time entries were miscoded to this proceeding that should have been billed to other KCP&L jurisdictional proceedings.<sup>168</sup> Cafer Law invoices illustrated the problem with using block billing for tasks involving different jurisdictional proceedings.<sup>169</sup> The Commission does not know, and cannot know, how many undiscovered billing errors remain in the invoices presented. What the Commission knows from its review of this record is that neither the law firms nor KCP&L made any billing adjustment to account for billing errors in attorney hours. And it is unreasonable to conclude that no billing errors were made by the 34 lawyers at six law firms billing a total of 12,395 hours. The Commission finds it just and reasonable to make a 5% adjustment to account for billing errors by deducting 416 hours resulting in a total number of 7,909 reasonable attorney hours to use in making a lodestar calculation.

71. Summary. Our effort to determine reasonable attorney hours among the three law firms is a difficult task that defies precision. Having reviewed the evidence presented on rate case expense as well as evidence from the earlier proceeding in this docket, this Commission exercises its discretion and concludes that, for purposes of making a lodestar calculation, 7,909 hours is an appropriate number to use for reasonable attorney hours for this proceeding.

## **2. Reasonable hourly rate for attorney work.**

72. After determining a number to use for reasonable attorney hours, to complete the lodestar calculation, the Commission must determine a reasonable rate. To do this, the

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<sup>167</sup> Tr. Vol. 15, pp. 3532-34 (Weisensee); CURB Exh. 18.

<sup>168</sup> Tr. Vol. 15, pp. 3537-50 (Weisensee); CURB Exh. 21 to 23.

<sup>169</sup> Tr. Vol. 15, pp. 3550-56 (Weisensee); CURB Exh. 24.

Commission considers what lawyers of comparable skill and experience practicing in the area in which the litigation occurred would charge for their time.<sup>170</sup>

73. KCP&L has the responsibility to show that the rates it agreed to pay outside attorneys and seeks to include in rate case expense are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.<sup>171</sup> The Commission touched upon this issue in its November 22, 2010 Order, noting the most experienced attorney representing KCP&L from this area was charging \$390 per hour but concluding the record was not adequate to adopt a “fee customarily charged in the locality for similar legal services.”<sup>172</sup> KCP&L questioned this discussion in its Reply to Responses made to its first Petition for Reconsideration,<sup>173</sup> but the Commission did not grant reconsideration on this issue.<sup>174</sup> However, when the Commission later granted reconsideration on the issue of rate case expense, KCP&L was given the opportunity to submit whatever evidence it wanted on this issue.<sup>175</sup> KCP&L has presented evidence discussing the value of services provided by Cafer,<sup>176</sup> Roberts,<sup>177</sup> Caro,<sup>178</sup> and other individual attorneys,<sup>179</sup> but no evidence was presented about the prevailing market rates in this area. Therefore, the Commission must rely upon its own knowledge to establish an appropriate reasonable rate to make a lodestar calculation.

74. Evidence established that Cafer began work on this proceeding charging \$200 an hour, but soon changed her billing rate to \$300 an hour.<sup>180</sup> Many attorney timekeepers were involved at Polsinelli Shughart and at Schiff Hardin; we begin by reviewing the hourly rate for the four primary attorneys at each firm. Invoices from Polsinelli Shughart reflect that the

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<sup>170</sup> *Case*, 157 F.3d at 1256.

<sup>171</sup> *Sheldon*, 237 F. Supp. at 1278.

<sup>172</sup> November 22, 2010, p. 94, *citing Westar Energy*, 235 P.3d at 531.

<sup>173</sup> Reply of KCP&L to Staff’s, CURB’s, and MUUG’s Responses to KCP&L’s Petition for Reconsideration and Clarification, filed December 22, 2011, ¶¶ 79-80.

<sup>174</sup> January 6, 2011 Order, ¶ 74.

<sup>175</sup> February 21, 2011 Order, ¶¶ 15, 21-23, 26-27.

<sup>176</sup> Tr. Vol. 16, pp. 3759-60 (Rush).

<sup>177</sup> Tr. Vol. 16, pp. 3686-88 (Downey); Tr. Vol. 16, pp. 3796-97 (Rush).

<sup>178</sup> Tr. Vol. 16, p. 3797 (Rush).

<sup>179</sup> Tr. Vol. 16, p. 3797 (Rush).

<sup>180</sup> KCP&L Exh. 1, pp. 2-3.

attorneys' hourly rates increased during the course of the proceeding: Caro's per hour rate increased in increments from \$375 to \$390 to \$400; Callenbach increased from \$260 to \$280 to \$300; Kane increased from \$200 to \$215 to \$235; and Hagedorn increased from \$185 to \$200.<sup>181</sup> Schiff Hardin invoices reflect hourly rates for attorneys that are higher than initial rates listed in the Contract for Legal Services, although the rate charged per attorney during this proceeding did not increase. Roberts' initial rate was \$495 per hour, but his rate in this proceeding was \$555 per hour; Okizaki's initial rate was \$350 per hour, but the billed rate was \$450 per hour; Gould's initial rate was \$245 per hour, but the billed rate was \$295 per hour; and an initial rate was not listed for Schermer, who billed at \$330 per hour.<sup>182</sup> Clearly attorney hourly rates in this proceeding vary widely, from \$185 to \$555.<sup>183</sup>

75. The Commission had considered the distribution of hours worked by attorneys reporting hours as timekeepers. Considering the unadjusted billable hours the various attorneys billed to KCP&L, 9.3% fell in the \$500-600 range; 9.3% in the \$400-500 per hour range; 14.8% in the \$350-400 range; 7.3% in the \$300-350 range; 37.0% in the \$250-300 range; 12.4% in the \$200-250 range; and 9.0% under \$200 per hour. Thus, almost 60% of the billed hours fell in the range of \$300 per hour and under. Moreover, of the three law firms being considered for the lodestar calculation, all of the time charged at a rate of over \$400 an hour were for attorneys at Schiff Hardin, for which KCP&L is already recovering more than \$20 million in capital costs for consulting work.

76. The most experienced attorneys from this area for which this Commission has responsibility, and who appear regularly before us, charged rates in the range of \$250 to \$400 per hour with the vast majority of those hours billed at \$300 per hour and less. If the hourly rate of

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<sup>181</sup> Schedule JPW2010-15, pp. 2-5.

<sup>182</sup> KCP&L Exh. 1, p. 145; Schedule JPW2010-15, pp. 2-5.

<sup>183</sup> Because the Commission will not allow recovery for services by attorneys at Morgan Lewis and Duane Morris, we will not consider their hourly rates in determining a reasonable attorney hourly rate. The Commission notes that hourly rates for attorneys at Morgan Lewis were \$540, \$600, \$750, and \$855 per hour. Schedule JPW2010-13, pp. 2-5. The hourly rates for attorneys at Duane Morris were \$210, \$215, \$430, \$480, and \$575 per hour. Schedule JPW2010-12, pp. 2-6.

\$300 is used, multiplying the reasonable number of attorney hours of 7,909 by \$300 results in a lodestar calculation of \$2,372,700. If the hourly rate of \$285 is used, multiplying the 7,909 reasonable attorney hours by \$285 results in a lodestar calculation of \$2,254,065. If the hourly rate of \$275 is used, multiplying the 7,909 reasonable attorney hours by \$275 results in a lodestar calculation of \$2,174,975. Having reviewed the record as a whole, the Commission finds these lodestar calculations using an hourly rate of \$275 to \$300 provides a range of appropriate attorney fees to consider in determining just and reasonable rate case expense for this proceeding. KCP&L is already recovering a sizeable amount for Schiff Hardin's work as a consultant, which supports our decision to give less weight to Schiff Hardin's hourly billing rates in determining a reasonable attorney hourly rate for the lodestar calculation for this proceeding. In considering and weighing various factors to reach a decision on rate case expense, the Commission has given significant weight to the lodestar calculation to determine a just and reasonable amount to include in rate case expense for attorney fees that is appropriate to recover from KCP&L's employees. The Commission now turns its analysis to rate case expense for non-attorney consultants.

#### **V. Determining Rate Case Expense for Non-attorney Consultants**

77. Billings by consultants present issues similar to the law firm billings. Invoices were inconsistent in their detail and it was impossible to determine the degree to which work effort was properly undertaken, duplication of work effort occurred, and any effort was made to review and manage billings by consultants. In total, eight outside consulting firms (excluding consultants hired by outside law firms and included in billings of those firms) with a total of 46 individual timekeepers billed more than 9,700 hours to this proceeding for a total of \$1,806,785.<sup>184</sup> At a high level, the Commission used a lodestar analysis that adjusted an appropriate amount of attorney charges from the requested \$5,141,986 to \$2,372,700 (using \$300/hour), \$2,254,065 (using \$285/hour) and \$2,174,975 (using \$275/hour), or a reduction of approximately 58%, 56.2%, and 53.8%. Thus, using these percentages, the range of allowed

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<sup>184</sup> Attachment A, pp. 3-4.

expenses for legal and consulting services would range from \$2.92 million at \$275 per hour to \$3.21 million at \$300 per hour.

#### **A. Billings by Consultants Generally**

78. In its November 22, 2010 Order, the Commission found billings by several outside consultants were appropriate to include in rate case expense.<sup>185</sup> During this proceeding, questions have been raised regarding fees for some of these outside consultants. We address those concerns in discussing individual consultants. As with all rate case expense, we evaluate consultants' expenses to determine whether the expense was prudently incurred and is a just and reasonable amount that is appropriate to recover from KCP&L's ratepayers.

79. Black & Veatch: Black & Veatch Corporation addressed issues related to jurisdictional allocations in terms of client and operations expenses and with an emphasis on an off-system, sales-margin allocator to examine the proper way to allocate between Missouri and Kansas.<sup>186</sup> KCP&L Witness Loos, Director of Black & Veatch's Enterprise Management Solutions Division, submitted prefiled direct and rebuttal testimony and testified as a witness at the 2010 Evidentiary Hearing.<sup>187</sup> The bills from Black & Veatch show four timekeepers reported 398 hours and a total expense of \$67,865.<sup>188</sup> During the hearing, Weisensee testified that Black & Veatch had been working with KCP&L before this docket and the Company believed it efficient and effective to continue using that firm rather than going through a Request for Proposal (RFP) process.<sup>189</sup> CURB expressed concern that Black & Veatch billings did not include detailed descriptions of hourly work. But we note the Consulting Services Agreement defined the work to be performed in detail.<sup>190</sup> Although the Commission did not accept the allocator proposed by

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<sup>185</sup> November 22, 2010 Order, p. 91.

<sup>186</sup> Tr. Vol. 17, pp. 3961-62 (Weisensee).

<sup>187</sup> Rush Direct, pp. 39-45. See November 22, 2010 Order, pp. 125-28.

<sup>188</sup> Weisensee Direct, p. Schedules JPW2010-10 and JPW2010-17. Tr. Vol. 15, p. 3379. The total expense billed was \$67,864.72, which we round up to \$67,865. JPW2010-17.

<sup>189</sup> Tr. Vol. 17, pp. 4045-46 (Weisensee).

<sup>190</sup> Tr. Vol. 15, pp. 3509-10 (Weisensee); CURB Exh. 9; KCP&L Exh. 1, pp. 1-2.

Loos, we conclude the decision to retain Black & Veatch was prudent and the amount asked to be included in rate case expense is just and reasonable.

80. FINANCO, Inc.: KCP&L retained Financial Analysts Consultants, Inc. (FINANCO), to address return on equity (ROE) as well as KCP&L's requested capital structure and overall rate of return. The principal contact was Dr. Samuel C. Hadaway, who submitted prefiled direct and rebuttal testimony and testified at the hearing.<sup>191</sup> In its November 22, 2010 Order, the Commission considered Hadaway's proposal in discussing capital issues, although it did not adopt his testimony.<sup>192</sup> The Executed Engagement Letter between Great Plains Energy and FINANCO was dated October 19, 2005, but the billing rates for timekeepers were updated in an undated sheet attached to the initial Letter.<sup>193</sup> Two timekeepers billed a total of \$79,875, which KCP&L seeks to recover in rate case expense.<sup>194</sup> Bill Baldry questioned hours spent on rebuttal testimony and identified errors in billings submitted by FINANCO.<sup>195</sup> In response, Weisensee testified that these were coding errors and that these expenses were properly billed to and included in this proceeding.<sup>196</sup> We conclude the decision to retain FINANCO was prudent and the amount sought to be included in rate case expense is just and reasonable.

81. Gannett Fleming, Inc.: KCP&L retained Gannett Fleming, Inc. to develop and sponsor the depreciation study that was filed with its Application. The primary contact was John G. Spanos, Vice President of the Valuation and Rate Division. Spanos conducts depreciation, valuation and original cost studies, determines service life and salvage estimates, conducts field reviews, and presents recommended depreciation rates to clients and before regulatory agencies.<sup>197</sup> In addressing depreciation issues in its November 22, 2010 Order, the Commission reviewed Spanos' depreciation study and discussed his proposals in detail. We adopted Spanos'

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<sup>191</sup> Rush Direct, pp. 28-33.

<sup>192</sup> November 22, 2010 Order, pp. 37-44.

<sup>193</sup> KCP&L Exh. 1, pp. 11-16.

<sup>194</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-18. The total expense billed was \$79,874.18, which we round up to \$79,875. Weisensee Direct, Schedule JPW2010-18.

<sup>195</sup> Baldry Direct, pp. 6-7, 10-11.

<sup>196</sup> Weisensee Rebuttal, p. 3; Tr. Vol. 17, p. 3968 (Weisensee).

<sup>197</sup> Rush Direct, pp. 45-49.

depreciation study except to the extent we approved proposals by Staff Witness Dunkel modifying components of the Spanos study.<sup>198</sup> A Statement of Work set out the agreement between Great Plains Energy Services, Inc. and Gannett Fleming, Inc. regarding the depreciation studies.<sup>199</sup> KCP&L seeks to recover the cost of the depreciated study allocated to this rate case, which totals \$44,347.<sup>200</sup> The Commission concludes the decision to retain Gannett Fleming was prudent and the amount requested to be included in rate case expense is just and reasonable.

82. Management Applications Consulting, Inc. (MAC): This vendor was retained to develop the account class cost of service (CCOS) that KCP&L was required to file under the 04-1025 S&A to provide the rate of return results at existing revenue levels for the Kansas jurisdictional customer CCOS study for KCP&L's electric business.<sup>201</sup> KCP&L asked to include the entire amount billed by Management Applications Consulting (MAC) of \$111,242 in rate case expense.<sup>202</sup> During the hearing, CURB questioned Weisensee about the lack of description for tasks performed in invoices submitted by this vendor. Weisensee explained this vendor only performed the class cost of service study and all work recorded by timekeepers with MAC addressed this issue.<sup>203</sup> Normand's CCOS study was submitted with the Company's Application, and Normand testified during the 2010 Evidentiary Hearing. Rush pointed out that the Commission ultimately adopted Normand's CCOS study and used it as a basis for determining rate design for KCP&L.<sup>204</sup>

83. The Commission shares CURB's concern that Normand and other timekeepers with MAC did not provide detailed descriptions of the work performed. The Master Agreement for Professional Services between Great Plains Energy Service, Inc. and MAC describes in detail the professional services that will be provided and attaches updates to the original Agreement

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<sup>198</sup> November 22, 2010 Order, pp. 60-75.

<sup>199</sup> KCP&L Exh. 1, pp. 17-24.

<sup>200</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-19.

<sup>201</sup> Rush Direct, pp. 33-39.

<sup>202</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-20.

<sup>203</sup> Tr. Vol. 15, pp. 3501-0, Vol. 17, p. 4032; CURB Exh. 9.

<sup>204</sup> Rush Direct, p. 35.

executed in April of 2008.<sup>205</sup> Work Order No. 3 specifically addresses the CCOS study to be prepared for this rate case, sets out objectives to be completed by MAC, lists the consultants and their assigned tasks, and provides a Milestones and Delivery schedule to be performed.<sup>206</sup> Attachment A to Work Order No. 3 contains a list of billing rates by classification of the timekeepers.<sup>207</sup> The Commission concludes that the decision to retain MAC to perform the CCOS study was prudent. Even though the Master Agreement was very detailed, the Commission finds lack of detail in invoices problematic in reviewing these expenses submitted for recovery as rate case expense. The Commission concludes invoices submitted by MAC do not adequately describe the work performed by the timekeepers and finds it just and reasonable to reduce the expenses submitted for MAC of \$111,242 by 10%, or \$11,124. The reduced amount of \$100,118 is just and reasonable to include as rate case expense.

84. Siemens Energy, Inc.: A line loss study is used to quantify the losses that result from operating the electric system and to associate those losses to the customer classes responsible for those losses. Siemens Energy performed a comprehensive Electric Loss Study for the KCP&L system in 2006 and updated that Study considering operation of the new 850 MW Iatan 2 generating unit.<sup>208</sup> This was the only line loss study conducted for this rate case and was used by other parties to normalize revenues. The expenses for this study were split between four jurisdictions, resulting in an expense for this case of \$20,027.<sup>209</sup> The Commission concludes the decision to retain Siemens Energy was prudent and the amount asked be included in rate case expense is just and reasonable.

85. Towers Watson: KCP&L retained Towers Watson to rebut direct testimony by Staff Witness Hull regarding pension-related matters, including a recommendation to disallow the

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<sup>205</sup> KCP&L Exh. 1, pp. 32-58.

<sup>206</sup> KCP&L Exh. 1, pp. 51-57.

<sup>207</sup> KCP&L Exh. 1, p. 58.

<sup>208</sup> Rush Direct, pp. 117-18.

<sup>209</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-23. Invoices for Siemens Energy totaled \$80,105.00, of which 25% was assigned to this docket. That amount, \$20,026.25, was rounded up to \$20,027. Schedule JPW2010-23.



pension cost adjustment proposed by KCP&L relating to St. Joseph Light & Power Company. KCP&L worked primarily with C. Kenneth Vogl, a consulting actuary with substantial technical and consulting experience on employee benefit plans.<sup>210</sup> Vogl submitted prefiled rebuttal testimony and testified during the 2010 Evidentiary Hearing. The Commission examined Vogl's criticism of Staff's recommendations but did not adopt Vogl's position.<sup>211</sup> KCP&L seeks to recover in rate case expense the entire amount billed for Tower Watson of \$19,964.<sup>212</sup> The Commission concludes the decision to retain Towers Watson was prudent and the expense requested be included in rate case expense is just and reasonable.

### **B. Consultants Hired to Address Prudence**

86. Numerous KCP&L witnesses submitting testimony related to prudence regarding the Iatan Project covered all aspects of prudence, including balance of plant and cost controls.<sup>213</sup> As discussed above in addressing duplication of work by attorneys,<sup>214</sup> KCP&L management claimed it needed to "ramp up" its efforts to address prudence after Drabinski filed testimony regarding prudence with respect to the Iatan 2 unit that, according to KCP&L, used a different approach than in the 09-246 Docket with respect to the Iatan 1 Unit. Rush testified that over 70%, or approximately \$5.5 million, of the \$7.7 million KCP&L-only rate case expense was incurred to address the prudence issue.<sup>215</sup> Rush justified this amount as needed to analyze whether management of the Iatan project was prudent under K.S.A. 66-128g, including briefing of Kansas precedent and decisions on prudence nationally.<sup>216</sup> Rush also cited Drabinski's testimony to support retention of numerous experts. Downey described this as a "bet the company" case with a \$2 billion price tag, which suggests to us why KCP&L placed no restraint

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<sup>210</sup> Rush Direct, pp. 89-93; Tr. Vol. 16, p. 3824.

<sup>211</sup> November 22, 2010 Order, pp. 55-58.

<sup>212</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-25. The amount billed totaled \$19,963.53, which we have rounded up to \$19,964. Schedule JPW2010-25.

<sup>213</sup> Rush Direct, p. 10; Tr. Vol. 16, p. 3752 (Rush).

<sup>214</sup> *Infra*, ¶ 63.

<sup>215</sup> Rush Direct, pp. 11-12.

<sup>216</sup> Rush Direct, pp. 5-6, 9-11.

on the effort to address prudence.<sup>217</sup> While management may decide to “bet the company” in response to what it perceives to be a significant threat to the goodwill and reputation of the company, the Commission will not allow recovery of this bet in rate case expense unless the utility meets its burden to show such expenses were prudently incurred, are just and reasonable, and are appropriate to recover from ratepayers. The consultants discussed next were engaged to address prudence.

### **1. Pegasus Global Holdings, Inc.**

87. Pegasus Global Holdings, Inc. (Pegasus), and specifically Dr. Kris R. Nielsen, was initially hired by KCP&L to audit the Iatan Project independent from KCP&L’s fact witnesses. Nielsen submitted testimony in the 09-246 Docket that was adopted into the record in this docket because prudence issues regarding Iatan Unit 1 were deferred from the 09-246 Docket to this rate case.<sup>218</sup> KCP&L asserted Pegasus was further retained to perform an independent audit for this rate case to examine whether KCP&L made reasonable and prudent decisions with regard to Iatan Unit 2. Nielsen also read, analyzed, and compared findings of Drabinski with findings by Pegasus regarding prudence issues. Nielsen submitted direct and rebuttal testimony and testified at the 2010 Evidentiary Hearing.<sup>219</sup>

88. The expenses for Pegasus that KCP&L seeks to recover in rate case expense total \$1,070,480; with the exception of Schiff Hardin, this is the largest amount KCP&L requests for an expert consultant.<sup>220</sup> The Consulting Agreement was executed between Duane Morris and Pegasus on August 19, 2008, “to provide professional consulting services to Duane Morris to assist Duane Morris in giving legal advice to KCP&L with respect to the rate proceedings under the terms and conditions hereinafter set forth.”<sup>221</sup> Duane Morris paid Pegasus for its services.<sup>222</sup>

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<sup>217</sup> Tr. Vol. 16, pp. 3667, 3700. See KCP&L Posthearing Brief, p. 10, n. 31.

<sup>218</sup> Rush Direct, pp. 82-89.

<sup>219</sup> November 22, 2010 Order, pp. 11-33.

<sup>220</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-22. The total amount requested is \$1,070,479.35, which is rounded up to \$1,070,480. Schedule JPW2010-22.

<sup>221</sup> KCP&L Exh. 1, p. 128.

Rates for professional services were listed in an attached Hourly Fee Schedule dated February 1, 2008, which matched the rates charged in this proceeding.<sup>223</sup>

89. The Commission notes Pegasus spent almost 1,300 hours and incurred expenses of over \$360,000 before KCP&L's Application was filed in December 2009; an additional 375 hours and more than \$105,000 was billed during the period of discovery before Drabinski's testimony was filed. During the two months after filing Drabinski's testimony, June and July 2010, Pegasus billed over 1,400 hours and more than \$361,000 – whether in aid of the analysis of Drabinski's testimony or in preparation of rebuttal cannot be determined from the record. For the month of the 2010 Evidentiary Hearing, August 2010, Pegasus billed 622 hours and over \$180,000.<sup>224</sup> The Commission concludes hiring Pegasus to conduct an independent study was prudent, but the work performed and billed after completing this independent study far exceeded the amount of work that a consultant of Neilson's purported stature and experience would be expected to incur to review Drabinski's testimony, analyze Drabinski's analysis, and compare the results of these two studies. Still, had Pegasus been the only prudence consultant hired to do this analysis, these expenses might be considered reasonable. But KCP&L management did not rely only upon the expertise of Pegasus to respond to Drabinski.

## **2. Daniel Meyer of Meyer Construction Consulting, Inc.**

90. Schiff Hardin was engaged by KCP&L to provide both consulting and legal advice to KCP&L regarding the Iatan Project. As part of its role in monitoring the Resource Plan's progress and costs, Schiff Hardin retained Daniel Meyer of Meyer Construction Consulting, Inc. According to Rush, Meyer's direct testimony analyzed the Control Budget Estimate, cost re-forecasts, external reporting mechanisms, and the Balance of Plant contracting methodology; in rebuttal testimony, Meyer focused on some issues discussed by Drabinski, such as Iatan Unit 2

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<sup>222</sup> KCP&L Exh. 1, p. 129. We note Charles W. Whitney was designated as Duane Morris' authorized representative and was not replaced even though Whitney was not with that firm after July 2009.

<sup>223</sup> KCP&L Exh. 1, pp. 128 and 136; Weisensee Direct, Schedule JPW2010-22.

<sup>224</sup> Summary of Hourly Fees, Attachment A, p. 3.

Project costs, the Project Definition Report and cost re-forecasts, and specific contracts, purchase orders, change orders, and other cost drivers.<sup>225</sup> Schiff Hardin, not KCP&L, retained Meyer as stated in the Contract for Legal Services Agreement and Attachment A entered into between KCP&L and Schiff Hardin.<sup>226</sup> Meyer's hourly rate was listed as \$395 an hour, but Meyer billed \$450 an hour.<sup>227</sup> KCP&L seeks to recover \$488,328 in rate case expense for Meyer.<sup>228</sup>

91. Meyer's expenses were not billed to KCP&L but are contained in a list of "CLIENT DISBURSEMENTS/CHARGES" in Schiff Hardin invoices. For example, Schiff Hardin Invoice #1524871, dated October 19, 2010, lists three items as "Professional Services – Vendor: MEYER" under the date 9/24/10; together these items total \$472,016.<sup>229</sup> These three billings from Meyer are attached to this Schiff Hardin invoice, giving the date work was performed, the number of hours worked each day; descriptions of work performed are very limited. In the billing for June 2010, Meyer billed as follows: approximately 56 hours for "work on various Kansas Unit 2 rate case cost issues & response to Vantage [i.e. Drabinski] report"; 13.35 hours on June 30, 2010, to "attend CCA meeting @ SH office"; 12.25 hours for "Work on Kansas Unit 2 rate case issues; meet @ SH office on same"; no description is given for work performed by associates, for which Meyer bills \$77,025.<sup>230</sup> Similarly, Meyer's billing for July 2010 included 39.5 hours to attend two CCA sessions, one on July 1, and the other on July 13 and 14; the description for the remaining 195.5 hours billed in July 2010 is "Work on various Kansas Unit 2 rate case cost issues & response to Vantage Report"; no description is given at all for associate billing that totals over \$76,000.<sup>231</sup> During August 2010, Meyer billed 231 hours to prepare for

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<sup>225</sup> Rush Direct, pp. 57-65.

<sup>226</sup> KCP&L Exh. 1, pp. 145, 148.

<sup>227</sup> KCP&L Exh. 1, p. 145; Weisensee Direct, Schedule 2010JPW-15, p. 20. Tr. Vol. 15, p. 3485 (Meyer hourly rate is \$450).

<sup>228</sup> Weisensee Direct, Schedule JPW2010-15, pp. 1, 20.

<sup>229</sup> KCP&L Exh. 2 (CD Rom), Schiff-Services\_June\_1\_2010\_to\_September\_30\_2010.pdf, pp. 1, 12, 19-24. See CURB Exh. 3, (Meyer billings for June, July, August and September 2010).

<sup>230</sup> KCP&L Exh. 2 (CD Rom), Schiff-Services\_June\_1\_2010\_to\_September\_30\_2010.pdf, pp. 24. See CURB Exh. 3, p. 6 (Meyer billing for June 2010). Tr. Vol. 15, pp. 3488-89 (Weisensee).

<sup>231</sup> KCP&L Exh. 2 (CD Rom), Schiff-Services\_June\_1\_2010\_to\_September\_30\_2010.pdf, p. 22. See CURB Exh. 3, p. 4 (Meyer billing for July 2010). Tr. Vol. 15, pp. 3487-88 (Weisensee).

and attend the 2010 Evidentiary Hearing, which totaled \$103,950; the billing for associates this month was 407.50 hours and totaled over \$67,000, with no itemized description of work.<sup>232</sup> CURB Witness Smith reviewed Meyer's billing and recognized he submitted testimony and testified at the hearing, but Smith found Meyer's billing suggested not much cost containment was occurring.<sup>233</sup>

92. The Commission questions whether KCP&L acted prudently in approving Schiff Hardin's hiring to Meyer Construction to work on the issue of prudence. Allowing Schiff Hardin to hire an important consultant on prudence obscured our ability to review the work performed to determine if the Company was prudent in contracting for this consultant's services and to decide whether this expense is just and reasonable and is appropriate to recover from ratepayers. In light of all the other rate case expense requested for consultants regarding prudence, and having taking into account the entire record in this proceeding, the Commission finds the evidence regarding expenses for Meyer do not support a finding that retaining this consultant was prudent or that these expenses are just and reasonable.

### **3. J. Wilson & Associates**

93. Schiff Hardin also contracted with J. Wilson & Associates, specifically with Jim Wilson, who worked for five years on project controls for the infrastructure projects at the Iatan site. Jim Wilson collected information about the Iatan Project and provided it to Meyer, who relied upon this information in performing his analysis.<sup>234</sup> Schiff Hardin's Contract for Legal Services with KCP&L listed J. Wilson & Associates as a third-party consultant, with Jim Wilson listed at \$250 per hour and another timekeeper at \$160 per hour; Wilson's billings charged \$300 per hour.<sup>235</sup> KCP&L seeks to recover in rate case expense the amount Schiff Hardin billings show for the amount billed by Wilson of \$119,375.<sup>236</sup>

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<sup>232</sup> CURB Exh. 3, p. 2; Tr. Vol. 16, pp. 3281-85 (Weisensee).

<sup>233</sup> Tr. Vol. 16, p. 3605 (Smith).

<sup>234</sup> Rush Direct, p. 59; Tr. Vol. 15, p. 3792 (Rush).

<sup>235</sup> KCP&L Exh. 1, p. 145; Tr. Vol. 16, p. 3639.

<sup>236</sup> Weisensee Direct, Schedule JPW2010-15, pp. 1, 14.

94. The evidence does not establish why Schiff Hardin, with all its resources as a consulting firm, needed to retain services of J. Wilson to assist Meyer. The amount KCP&L seeks to recover in rate case expense for Meyer and Wilson exceeds \$600,000. We note that during the months of June through August 2010, Meyer incurred over \$400,000 and Wilson over \$100,000. During these same three months, Pegasus incurred over \$541,000. Yet no adjustment was made for the work of these consultants assigned to prudence. We do not include expenses for Wilson in rate case expense.

#### **4. Steven Jones Retained by Schiff Hardin**

95. Schiff Hardin invoices also include expenses for subcontractor Steven Jones, who testified about processes and procedures for procurement of equipment and the use of Kiewit for the Balance of Plant work. Rush stated that Jones “is uniquely qualified to testify as to these issues, as from March 16, 2006 through April 2009, he was the Director of Procurement for KCP&L.”<sup>237</sup> Apparently Jones handled all procurement activities for KCP&L’s Resource Plan as well as for the commercial management and administration of the Iatan project contracts and the material management and distribution for the Iatan project. At some point, Jones became a subcontractor through Schiff Hardin rather than a contractor with KCP&L. Here, KCP&L seeks to recover through rate case expense a total of \$188,795 for Jones, as listed in Client Disbursements and Charges in Schiff Hardin invoices.<sup>238</sup> The Commission’s obvious concern, not addressed in the evidence, is why Jones was retained by Schiff Hardin as a consultant rather than continuing his relationship directly with KPC&L. CURB Witness Smith expressed concern that Jones’ fees were not contained.<sup>239</sup> The record does not state Jones’ hourly rate when he worked as a contractor directly with KPC&L or explain why he became a consultant for Schiff Hardin. We find KCP&L has not provided sufficient evidence to find it just and reasonable to include expenses for Wilson in rate case expense.

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<sup>237</sup> Rush Direct, pp. 65-67; Tr. Vol. 15, p. 3794 (Rush); Tr. Vol. 17, p. 4012 (Weisensee).

<sup>238</sup> Weisensee Direct, Schedule JPW2010-15, pp. 1, 17; Summary of Hours, Attachment A, p. 3;

<sup>239</sup> Tr. Vol. 16, p. 3606 (Smith).

## 5. Schiff Hardin as consultants on prudence.

96. The Schiff Hardin law and consulting firm has presented troubling issues in determining an appropriate rate case expense in this docket.<sup>240</sup> Schiff Hardin was a key consultant in managing construction of Iatan 2,<sup>241</sup> but KCP&L also claims the firm provided legal services totaling \$2,852,109.83 that should be included in rate case expense.<sup>242</sup> This amount is in addition to approximately \$20 million Schiff Hardin was paid for consulting on Iatan 2 that KCP&L is already recovering through capitalized costs for the Iatan project that are included in the revenue requirement to be recovered from ratepayers over the life of the Iatan project, with carrying costs.<sup>243</sup>

97. The Commission notes that in its dual role as attorney and consultant, Schiff Hardin asserted attorney/client privilege for quarterly reports to KCP&L management about construction of Iatan 2. Those Reports were not only treated as Confidential during the 2010 Evidentiary Hearing, but also were claimed protected by the attorney/client privilege, which prevented other parties and the Commission from reading them.<sup>244</sup> The Commission cannot assess the reasonableness of the work done by Schiff Hardin if its consulting work is shielded from the Commission's review through KCP&L's assertion of a confidential attorney-client communication.<sup>245</sup> Although none of the parties objected to KCP&L's assertion of the attorney-client privilege during the 2010 Evidentiary Hearing, given KCP&L's lax or non-existent management of its legal expenses, the Commission questions whether Schiff Hardin's work was properly protected as confidential attorney-client privileged communications. The line between legal and consulting work is not clear in this proceeding.

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<sup>240</sup> November 22, 2010 Order, p. 94.

<sup>241</sup> Tr. Vol. 4, pp. 934-37 (Downey).

<sup>242</sup> Weisensee Direct, Schedule JPW2010-15.

<sup>243</sup> Tr. Vol. 16, p. 3744 (Rush) (KCP&L paid Schiff Hardin in excess of \$20 million as an expert non-legal consultant on the Resource Plan); Crane Direct, p. 15.

<sup>244</sup> Tr. Vol. 5, pp. 952-59 (Downey); Exhibits 60-63 (Confidential Status Reports by Schiff Hardin).

<sup>245</sup> Tr. Vol. 16, p. 3795 (Wright) ("We have no way sitting [] here to know what exactly is done by Schiff Hardin the lawyers as opposed to Schiff Hardin the consultants.").

98. Downey testified the work by Kenneth Roberts and his team was important in assisting him with building the project, challenging KCP&L's internal management team to recognize the importance of reporting requirements relating to the Iatan 2 Project, and ultimately communicating all elements of the effort to construct the Iatan 2 Project to both the Missouri and Kansas commissions.<sup>246</sup> But Downey stated KCP&L leadership managed the project, not Schiff Hardin, noting the Executive Oversight Committee reviewed Schiff Hardin's reports monthly.<sup>247</sup> Downey described Schiff Hardin as "an aid to us in managing a very huge, complex project that involves many skills that we don't normally wrestle with during the normal course of . . . the ongoing electric utility business."<sup>248</sup> Yet Downey could not identify any evidence to show anyone in KCP&L management questioned or scrutinized Schiff Hardin invoices even though these invoices reflect continuous duplication of effort by Roberts and the rest of his legal team.<sup>249</sup>

99. We note the Contract for Legal Services, dated January 17, 2007, listed five law firm timekeepers with individual hourly rates and four additional consultant timekeepers with individual hourly rates.<sup>250</sup> But Schiff Hardin billings include invoices for 13 law-firm timekeepers and additional consultants. The record contains no evidence that KCP&L ever approved Schiff Hardin's use of an additional law firm timekeepers or consultants even though the Contract for Legal Services states, "All fees and costs are subject to annual adjustments, which must be supplied to and approved by KCP&L's General Counsel at least 30 days prior to the effective date of any such adjustments."<sup>251</sup> Rush asserted that "every attorney that we utilized is somewhere below the mean paid for attorney fees throughout the regions that they are representing,"<sup>252</sup> although nothing in the evidence confirms his opinion.

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<sup>246</sup> Tr. Vol. 16, pp. 3687-88.

<sup>247</sup> Tr. Vol. 16, p. 3678 (Downey).

<sup>248</sup> Tr. Vol. 16, p. 3677 (Downey).

<sup>249</sup> Tr. Vol. 15, pp. 3527 (Weisensee) and CURB Exh. 16 and 17 (Schiff Hardin vouchers drafting and redrafting testimony of witnesses).

<sup>250</sup> KCP&L Exh. 1, pp. 143, 145.

<sup>251</sup> KCP&L Exh. 1, pp. 145-46.

<sup>252</sup> Tr. Vol. 16, p. 3739 (Rush).



100. The evidence does not show review or approval for Schiff Hardin to use additional unlisted timekeepers, and does not show KCP&L's General Counsel approved any adjustment in hourly rates or costs for Schiff Hardin even though the contract clearly required him to approve "annual adjustments" at least 30 days before the effective date of any adjustment.<sup>253</sup> The Commission concludes that the Company was inattentive in reviewing Schiff Hardin billings and that KCP&L has not met its burden to establish detail needed to find the total amount requested for Schiff Hardin in rate case expense is just and reasonable.

101. The Commission finds Roberts and his team have already been well paid for work consulting on Iatan, and KCP&L has already been allowed to recover more than \$20 million as costs for Schiff Hardin in rates. Also, the Commission has allowed hours to be included for work by additional Schiff Hardin attorneys, who were brought into this proceeding without approval by KCP&L's general counsel. The Commission concludes our decision on rate case expense, which relies significantly on the lodestar calculation, includes appropriate compensation to KCP&L for the legal work in this rate case proceeding, including that provided by Schiff Hardin and other prudence consultants.

### **C. NextSource and Use of Retired KCP&L Employees**

102. KCP&L asked that \$415,981 be included in rate case expense for NextSource, Inc., which is a consultant and temporary employee resource provided by this staff services company for a variety of business operations functions.<sup>254</sup> This included services of two former KCP&L employees, Chris Giles (billings total \$272,625) and Chris Davidson (billings total \$93,630), and one current KCP&L employee, Forest Archibald (billings total \$11,900).<sup>255</sup>

103. Giles was formerly KCP&L's Vice President, Regulatory Affairs, but retired in 2009. Rush stated that Giles was instrumental in developing and implementing the Regulatory Plan and that Giles retired from KCP&L "to specifically enter the regulated utility consulting

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<sup>253</sup> KCP&L Exh. 1, pp. 145-46.

<sup>254</sup> Weisensee Direct, Schedule JPW2010-10; Tr. Vol. 15, 3413-22 (Weisensee).

<sup>255</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-21, pp. 1, 5-8, 13-14.

field.”<sup>256</sup> The Commission notes the remarkable timing of Giles’ retirement that afforded him an opportunity to consult on this proceeding. Davidson also retired from KCP&L and continued working on the same issues regarding the Resource Plan. She was supervised by Weisensee, who was the responsible party directing and reviewing Davidson and even encouraged NextSource to provide a raise for her work on the Resource Plan.<sup>257</sup>

104. The Commission is troubled by KCP&L’s hiring of retired employees rather than hiring and training replacement employees but recognizes the ongoing nature of the Resource Plan shows why former employees might be useful as witnesses in specific instances. Overall, the Commission finds KCP&L failed to present evidence sufficient to show why such extensive use of NextSource was necessary and essential to presenting its case in this proceeding. We have taken this into account in setting the rate case expense in this proceeding.

#### **D. Other Vendors Providing Services**

105. Weisensee noted that, in preparing for and managing a case of this complexity, KCP&L needed to use outside vendors to provide ancillary services. KCP&L used the advertising agency Kuhn & Wittenborn, Inc. to purchase the schedule of newspaper advertisements the Commission required be used to notify KCP&L’s Kansas customers about the public hearings scheduled for this proceeding. KCP&L asks the Commission to include as rate case expense \$33,366 for services provided by Kuhn & Wittenborn.<sup>258</sup>

106. Other ancillary vendors included (1) XACT Data Discovery that provided printing service for the Application, minimum filing requirements and filed testimony, for which KCP&L seeks to recover \$57,724 in rate case expense<sup>259</sup>; (2) XPEDX that provided supplies for document services for filings, for which KCP&L seeks to recover \$7,778 in rate case expense<sup>260</sup>; and (3) lodging expenses for KCP&L representatives to stay at the Hampton Inn in Topeka, Kansas,

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<sup>256</sup> Rush Direct, pp. 50-57; Tr. Vol. 16, p. 3752 (Rush).

<sup>257</sup> Tr. Vol. 15, pp. 3421-27 (Weisensee).

<sup>258</sup> Weisensee Direct, p. 122 and Schedules JPW2010-10 and JPW2010-27.

<sup>259</sup> Weisensee Direct, p. 122 and Schedules JPW2010-10 and JPW 2010-28.

<sup>260</sup> Weisensee Direct, p. 122 and Schedules JPW2010-10 and JPW 2010-29.

during the 2010 Evidentiary Hearing, for which KPC&L seeks to include \$36,058 in rate case expense.<sup>261</sup>

107. In the November 22, 2010 Order, the Commission listed Kuhn & Wittenborn and Excellence (Copying) with other outside vendors that provided helpful information for this proceeding and for which costs were found to be prudent and just and reasonable without duplicating work of others. Regarding housing of attorneys, consultants, and KCP&L employees in the November 22, 2010 Order, the Commission found this expense was high considering the Company's proximity to the Commission's office and concluded shareholders should have some responsibility for paying housing costs.<sup>262</sup>

108. Overall the expense for these four Other Vendor Services totals \$134,925. In addition, KCP&L seeks recovery for (1) "Miscellaneous vendors" that each individually billed less than \$5,000 in the amount of \$7,549 and (2) "Expense Reports" that KCP&L employees reported for meals, lodging, mileage, etc., in the amount of \$25,327; these two sets of expenses total \$32,876. These amounts do not begin to cover miscellaneous expenses billed by outside attorneys and consultants for meals, lodging, travel, mileage, etc. The amount for such expenses for Polsinelli Shughart was \$26,267<sup>263</sup> and for Cafer Law was \$52,154, which included \$49,353 for the transcript of the 2010 Evidentiary Hearing.<sup>264</sup> Such expenses for Schiff Hardin were over \$100,000.<sup>265</sup> We have not evaluated the cost of each flight taken by an attorney or consultant, each meal eaten, each night in a hotel or other such minutia, nor do we believe this necessary. The overall expenses KCP&L has incurred through hiring many outside consultants and attorneys resulted in an unusually large amount it has asked to be included as part of rate case expense. In reaching our decision on rate case expense, we took into account the total miscellaneous expenses KCP&L asked to be reimbursed by ratepayers. We find that the total amount of expenses

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<sup>261</sup> Weisensee Direct, p. 122 and Schedules JPW2010-10 and JPW2010-26.

<sup>262</sup> November 22, 2010 Order, p. 91.

<sup>263</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-14, pp. 1, 16.

<sup>264</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-11, pp. 1, 3.

<sup>265</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-15, pp. 1, 22.

requested is excessive based upon the evidence presented and that it is appropriate for KCP&L shareholders to bear the costs of such expenses not covered by the rate case expense we award.

#### **VI. Further Considerations for Rate Case Expense in This Proceeding**

109. Issues arose during this proceeding that the Commission will address in light of evidence in the record. The Commission has found that, based on its review of evidence in the record as a whole, KCP&L management did not act prudently and carefully and was inattentive in reviewing and monitoring the expense incurred for attorney fees and for consultants in pursuing this rate case. In fact, KCP&L management allowed an exorbitant amount of rate case expense, particularly attorney fees, to be incurred in this proceeding and then asked that ratepayers pay this entire expense. The process KCP&L used to oversee and monitor rate case expense as it was incurred by attorneys and consultants did not coordinate the work of attorneys in the various firms, which resulted in extensive duplication of effort. No effort was made to limit the number of hours expended by attorneys. KCP&L management may decide to incur extraordinary expenses to defend criticism by other parties in a rate case, and without regard to the cost, but it is inappropriate for ratepayers to bear 100% of such costs in rate case expense. The Company has the burden to show the amount requested as rate case expense is both prudently incurred and to support the portion passed through to ratepayers as a just and reasonable expense.

##### **A. KCP&L's Process Used to Monitor Rate Case Expense.**

110. The Commission examines the procedure KCP&L management purportedly put in place to monitor use of attorneys and consultants. The Commission knows that KCP&L employed a very detailed reporting process to ensure its management was informed regarding project construction and management, including receiving data weekly that allowed management to monitor compliance with the budget for the Iatan construction project. KCP&L also developed a detailed, formal protocol to coordinate and assign responsibility for work among the various contractors involved in the Iatan construction project, and documented efforts undertaken to construct Iatan Unit 2 and comply with other requirements under KCP&L's comprehensive

Resource Plan.<sup>266</sup> Yet, a similar monitoring process was not used for rate case expense. While KCP&L set a budget for its construction activities associated with Iatan, no budget or expenditure limits were adopted for the rate case expense associated with this phase of the Iatan project for either consultants or attorneys.<sup>267</sup> No formal protocol coordinated efforts and resources of outside law firms and consultants. No process was used to watch for duplication of work or overlapping services. No incentive was present for KCP&L management to demand granularity regarding rate case expense or to control costs that would eventually be sought through rate case expense.<sup>268</sup> The evidence indicates KCP&L management either had no review process for rate case expense or developed a review process for rate case expense that was completely inadequate.

111. Weisensee, a manager in KCP&L's Regulatory Affairs Department, was primarily responsible for the revenue requirement issue in this rate case.<sup>269</sup> He testified a regulatory asset account was set up to defer rate case costs in April 2009. Project and activity identification numbers (IDs) were assigned to income statement accounts and an account number indicated the appropriate jurisdiction. At the end of each month, the Accounting department transferred all incremental rate case costs to the appropriate deferral account. Incremental rate case costs refer to non-internal labor costs because internal labor costs are recovered through the payroll annualization.<sup>270</sup> But internal labor for department 490, Construction Management, was treated as an exception. Usually this department charged time to capital projects, but here internal labor for department 490 was assigned to rate case expense for providing support to the docket, such as answering data requests.<sup>271</sup> The Commission notes wages, bonuses, and benefits of attorneys

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<sup>266</sup> Tr. Vol. 16, pp. 3677-78 (Downey). See, November 22, 2010 Order, pp. 28-29 (summarizing tools KCP&L used to ensure management decisions were based on available data). See also, Rush Direct, p. 8 ("KCP&L brought on industry experts to provide support and experience and implemented rigorous controls, processes and procedures to ensure the proper schedule and cost control on the [Iatan 2] project.").

<sup>267</sup> Tr. Vol. 15, pp. 3389-92 (Weisensee); Tr. Vol. 16, 3364-65 (Downey).

<sup>268</sup> Tr. Vol. 26, pp. 3914-15 (Rush).

<sup>269</sup> Tr. Vol. 17, pp. 3953-54 (Weisensee).

<sup>270</sup> Weisensee Direct, p. 4; Tr. Vol. 15, p. 3404 (Weisensee).

<sup>271</sup> Weisensee Direct, pp. 4-5.

working in house on the rate case were recovered as an ongoing cost of operation through payroll annualization.

112. Weisensee explained that invoices for rate case vendors generally went to the person or department responsible for selecting and monitoring the particular vendor's services and costs, referred to as the "responsible person."<sup>272</sup> If the invoice was appropriate, the responsible person approved it for payment. If the invoice triggered questions or concerns, the responsible person contacted the vendor for an explanation and made appropriate adjustments before approving the invoice for payment. KCP&L Accounting and Regulatory Affairs departments were involved in a month-end closing process. The Regulatory Affairs department was responsible for monitoring rate case costs throughout the case.<sup>273</sup> Weisensee reported a month-end closing process validated the reasonableness of rate case costs, but we note those participating were in accounting, not the responsible person for reviewing the invoices.<sup>274</sup> Individuals in accounting seem ill-prepared to assess the reasonableness of legal and consulting invoices, but KCP&L's process seems to have vested final review in those individuals.

113. Evidence at the hearing suggested KCP&L's review process for legal expenses did not ensure careful and attentive review of work by outside law firms or consultants those firms employed. The legal department was the responsible person for reviewing law firm invoices, except Schiff Hardin invoices were assigned to another responsible party. But no responsible person assigned to review law firm invoices testified here, even though we previously noted rate case expense attributable to legal services here was excessive.<sup>275</sup> Nor does the evidence show a responsible person actively monitored or questioned charges accumulated by any outside law firm. KCP&L pointed to notations occasionally questioning a mislabeled assignment or correcting an inappropriate account number assigning jurisdiction,<sup>276</sup> but numerous miscoded

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<sup>272</sup> Weisensee Direct, p. 5.

<sup>273</sup> Weisensee Direct, p. 5.

<sup>274</sup> Tr. Vol. 15, p. 3411.

<sup>275</sup> November 22, 2010 Order, p. 92.

<sup>276</sup> Tr. Vol. 15, pp. 3548-3550 (Weisensee).

expenses not caught during KCP&L's review process were pointed out during the hearing.<sup>277</sup> No evidence shows a responsible party reviewed invoices to identify and adjust for duplication of work even though we found duplication of research assignments, testimony drafting, and witness preparation was obvious when we reviewed and compared invoices from law firms. Instead of adopting a process to ensure careful and cautious review of invoices, the evidence shows the Company pursued an unrestrained mission to validate KCP&L management's conduct with regard to Iatan 2. KCP&L used outside law firms and consultants to validate this work without regard for the cost. In contrast to the very detailed review and monitoring of the construction work on Iatan, done with extensive and costly help of the "Roberts team," no similar review process reviewed and monitored rate case expense, including hours incurred by the "Roberts team" to pursue the Company's stated mission for this rate case.<sup>278</sup> The Commission finds the failure to develop and implement such a review process with regard to rate case expense supports our conclusion that not all rate case expense accumulated by KCP&L was prudently incurred.

#### **B. Retainer Agreements.**

114. The Commission finds KCP&L management acted imprudently when it failed to enter into retainer agreements, or engagement contracts, with one of the law firms and several of the outside consultants. KCP&L was directed to provide, at the beginning of the evidentiary hearing, a copy of retainer agreements or engagement letters with each vendor for which KCP&L requested recovery of rate case expense in this proceeding.<sup>279</sup> KCP&L provided copies of sixteen agreements.<sup>280</sup>

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<sup>277</sup> Baldry Direct, pp. 10-15 and Exh. WEB 2, pp. 1-6. Weisensee Rebuttal, pp. 2-3; Tr. Vol. 15, pp. 3593-69 (Weisensee); Tr. Vol. 17, pp. 3963-68 (Weisensee).

<sup>278</sup> Tr. Vol. 16, p. 3716 (Downey).

<sup>279</sup> *Prehearing Officer's Order Denying KCP&L's Motion to Strike Testimony of CURB Witnesses Crane, Harden and Smith, Scheduling Filing of Post-hearing Briefs, and Directing KCP&L to File Retainer Agreements*, issued September 2, 2011, ¶ 10.

<sup>280</sup> KCP&L Exh. 1.

115. KCP&L could not provide a copy of a retainer agreement with the law firm Morgan Lewis & Bockius even though that firm billed \$155,227 for its work in this case.<sup>281</sup> Counsel for KCP&L explained that KCP&L and Morgan Lewis had a long-standing relationship beginning in 1999 and that an engagement letter or retainer contract with Morgan Lewis apparently did not exist for this rate case.<sup>282</sup> In its November 22, 2010 Order, the Commission did not allow recovery of costs for Morgan Lewis because work by the only attorney from that firm appearing at this hearing duplicated work of other experienced attorneys, including two former General Counsels to the Commission, one former Assistant General Counsel, and KCP&L's in-house regulatory attorney. The Commission concluded work of Morgan Lewis clearly duplicated work performed by other capable attorneys and refused to allow billing by this firm to be included in rate case expense.<sup>283</sup>

116. Now the Commission has learned KCP&L management did not enter into a retainer agreement for Morgan Lewis to provide service in this rate case. Regardless of the length of their relationship, failure to enter into a retainer agreement with Morgan Lewis regarding this complex proceeding reflects KCP&L management's carelessness and lack of judgment when incurring rate case expense here. Cafer, a former General Counsel to the Commission, was initially assigned the prudence issue for KCP&L, including cross-examination of Staff Witness Drabinski, and no evidence has explained why Van Gelder was actually necessary or essential to cross-examine Drabinski to present KCP&L's case. This was a management decision with no adjustment in billing judgment for duplicated effort. Evidence presented in this proceeding affirms the Commission's initial decision not to allow recovery of fees for Morgan Lewis as part of rate case expense.

117. Billings for Morgan Lewis include pretrial work by attorneys in the firm and reimbursement for work by subcontractor Global Prairie. No evidence has been offered to show

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<sup>281</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-13.

<sup>282</sup> Tr. Vol. 17, pp. 4017-18 (Buffington).

<sup>283</sup> November 22, 2010 Order, p. 93.



prehearing work by Morgan Lewis attorneys was actually necessary or essential in presentation of KCP&L's case. The Commission will not allow charges these attorneys, who do not have a retainer agreement, to be included in rate case expense. Morgan Lewis invoices also billed for work by Global Prairie, which exceeded \$47,000. Apparently Global Prairie developed a microsite and other communications to provide "accurate and timely information to customers and other external stakeholders about [KCP&L's] pending rate case."<sup>284</sup> Cost to retain a public relations firm is not an appropriate rate case expense and it seems unusual, if not extraordinary, that a law firm would be charged with hiring such a firm. But no retainer agreement was produced describing what Morgan Lewis was hired to do in this case, so the Commission cannot objectively assess what KCP&L instructed Morgan Lewis to do. The Commission will not allow recovery of any expenses billed by Morgan Lewis, including those for Global Prairie, as part of rate case expense in this docket.

#### **VII. Assessment of Expenses for Commission, Staff and CURB.**

118. KCP&L requests rate case expense to reimburse its assessment under K.S.A. 66-1502 for expenses incurred by the Commission, Staff of the Commission, and CURB. In the November 22, 2010 Order, the Commission approved KCP&L's request to recover the estimated costs for the Commission and CURB totaling \$1,169,712.<sup>285</sup> Now KCP&L asks that it be allowed to recover the total amount it has been assessed for CURB and the Commission up to November 30, 2010. This amount includes \$1,234,781 for the Commission and its Staff and \$188,051 for CURB; the total is \$1,422,832.<sup>286</sup> As noted in our November 22, 2010 Order, KCP&L has no control over costs incurred by the Commission and CURB. In light of the work done by Staff and CURB in responding to the effort by KCP&L, the Commission finds the total of \$1,422,832 is a reasonable amount to include as rate case expense passed through to customers. KCP&L is allowed to recover this amount in rate case expense of this proceeding.

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<sup>284</sup> Weisensee Direct, Schedule JPW2010-13, p. 6; Tr. Vol. 15, pp. 3443-45 (Weisensee); Tr. Vol. 17, p. 3992 (Weisensee).

<sup>285</sup> November 22, 2010 Order, p. 90.

<sup>286</sup> Schedules JPW2010-10, JPW2010-30 (the KCC), and JPW2010-31 (CURB).

## VIII. Conclusion

119. The Commission concludes that \$5,922,832 is an appropriate amount to recover for rate case expense for this proceeding. We are aware that not every timekeeper submitting hours, hourly rate, and expenses, as reported by KCP&L, has been specifically evaluated and identified in this Order, as doing so would double its length. In reviewing the evidence submitted by the parties on reconsideration, the Commission has reviewed hundreds of pages of testimony, numerous exhibits, and thousands of invoices and billing statements. Suffice it to say, the Commission has considered the record as a whole in making this decision. Having done so, the Commission finds that the rate case expense to be included in revenue requirement and recovered from ratepayers is \$5,922,832. This rate case expense will be amortized over four years. We note that KCP&L has had rates recovering the four-year amortization of \$5,669,712<sup>287</sup> as specified in the November 22, 2010 Order.<sup>288</sup> In order to recover the additional \$253,120 awarded in this Order, KCP&L shall amortize the amount over three years.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Commission hereby awards \$5,922,832 as prudently incurred and just and reasonable rate case expense to be recovered from KCP&L's ratepayers, as set forth in this Order.

(B) Parties have agreed to electronic service, with no hard copy follow-up. Parties have fifteen days from the date of service of this Order in which to petition the Commission for reconsideration of any matter decided herein. K.S.A. 66-118b; K.S.A. 2010 Supp. 77-529(a)(1).

(C) The Commission designates this Order as precedent under 2011 House Bill 2027, *amending* K.S.A. 2010 Supp. 77-415, that may be relied upon in any subsequent adjudication.

(D) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

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<sup>287</sup> November 22, 2010 Order, p. 95.

<sup>288</sup> November 22, 2010 Order, pp. 83-95.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn, concurring; Loyd, Com.; Wright, Com.

Dated: JAN 18 2012

  
ORDER MAILED JAN 18 2012  
Patrice Petersen-Klein  
Executive Director

mjc

## Docket No. 10-KCPE-415-RTS

Chairman Sievers, concurring:

I write this concurring opinion to express concern about the incentives inherent in the regulatory process that inflate costs and flow those costs through to both customers and investors during the deepest most prolonged recession our country has experienced in more than a half a century. I also offer my observations as a former corporate manager and a lawyer who has worked in both private practice and as in-house counsel for a number of regulated firms.

At a high level, the Commission's role is to promote the public interest by balancing the interests of both consumers and investors. In this portion of the proceeding, KCP&L claimed rate case expenses totaling about \$9 million. The Commission affirmed its order granting KCP&L recovery of about \$5.7 million. Thus, consumers are asked to bear about 66% of claimed rate case expenses and investors about 34%. The Commission concludes that nothing presented in this portion of the case suggested that that balancing from the Commission's prior order is inappropriate, unjust or unreasonable.

I was not on the Commission during the litigation of the 415 docket, so I cannot opine about the merits of case or the performance of the individuals involved. I believe that many talented individuals participated in and contributed to this case. What is apparent to me, however, is that the rate case expenses associated in this matter are well beyond anything this Commission has previously approved and found to be "*just and reasonable*" or "prudent" and well beyond my experience.

At a high level, I start my analysis with the observation that a large proportion of the population has a dim view of government. It is viewed by some as inefficient and ineffective, and as dominated by efforts at ensuring on-going access to entitlement programs. Again, at a high level, this case presents two basic policy questions to me: (1) To what degree can a firm invoke the power of government (the Commission's rate making authority) to require others to pay for its legal expenses, and (2) To what degree do government processes (the litigious rate making process itself) contribute to those expenses.

As the Commission described in detail in its Order, and in Attachment A, the number of lawyers and consultants engaged in just this portion of the proceeding is remarkable. There were six different law firms with a total of 47 lawyers and consultants engaged by those firms billing a total of more than 16,000 hours of time and \$5.1 million to this proceeding. In addition, this portion of the proceeding involved eight outside consulting firms with a total of 46 individual time keepers who billed more than 9,700 hours and about \$1.8 million. Thus, a total of more than 90 time keepers billing more than 25,000 hours of legal and professional services were engaged in just this portion of this regulatory proceeding that dealt largely with a single hearing focused largely on a single issue -- the prudence of the Iatan project.

In this case, the awarded revenue requirement underlying these claimed rate case expenses is about \$21.8 million, so the claimed rate case expenses of \$9 million are approximately 41% of

awarded revenue requirements and the rate case expenses of \$5.7 million awarded by the Commission are 26% of awarded revenue requirements. As I will describe below, historically, awarded rate case expenses ranged between 0.8% and 5.9% of revenue requirements.

It is important to emphasize that the rate case expenses considered in this portion of this docket dealt largely with a single issue and a single hearing. KCP&L's witness testified that 70% of its expenses in this proceeding were focused on supporting the prudence of management decision to build the Iatan unit.<sup>1</sup> Most of the work effort in question in this portion of the case was allegedly devoted to an analysis of this issue, and specifically rebutting the testimony of a single Staff rebuttal witness, Walter Drabinski.<sup>2</sup> So, the work efforts under consideration here were not generally the costs of a wide ranging rate case that presented novel public policy considerations.

Nobel Prize winning economist Milton Friedman is famous for categorizing spending decisions into four categories, generally ranked from most to least efficient.<sup>3</sup>

1. Category one is spending your own money for your own benefit. Spending in this category is the most efficient. You are very careful with that money because it represents your work efforts and you are in the best position to know what you want to spend your money on. The spender has an economic incentive to minimize expenditures and personal insight into the benefits resulting from the spending.
2. Category two is when you spend your own money on someone else. For example, spending in this category might include when I buy a present for my wife. I am careful with the money, set a budget, but it's always questionable whether this was something she really wanted. The spender has an incentive to minimize expenditures, but may not have insight into the benefits of the spending.
3. Category three is when you spend someone else's money on yourself. An example of this is when you travel or dine out at your employer's or client's expense. You're careful, but not as much as when you're spending your own money. The spender has less incentive to minimize spending, and limited insight into the benefits of the spending.
4. Category four is when you spend someone else's money on someone else. Spending in this category has the potential of being the least efficient. Popular examples of this include government spending – the money comes from the taxpayer and government agencies decide who and what to spend it on. It can be inefficient because the agency that makes the spending decision did not have to earn the money being spent and it is speculating about what the recipient needs or wants. The spender has neither the incentive to minimize expenditures nor the insight into the benefits of the spending.

Fundamentally, this case involves spending in categories three and four – spending someone else's money. Lawyers and consultants hired by the utility are spending somebody else's money (consumers' and/or the investors' money) to pursue litigation. The company assumes it will recover whatever it spends on the litigation from either consumers or investors.

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<sup>1</sup> Rush Direct, pp. 11-12.

<sup>2</sup> Tr. Vol. 16, pp. 3667-68 (Downey).

<sup>3</sup> M. Friedman & R. Friedman, FREE TO CHOOSE: A PERSONAL STATEMENT, pp. 115-119 (1990).

CURB and Staff are also funded by assessments paid by the company, but at a far lower level that companies typically spend in a case. No one has an economic incentive to minimize their spending.

The amount to spend on rate cases and legal fees is a managerial decision. It rises to a Commission matter when the Commission is asked to allocate the spending between consumers and investors. As this case demonstrated, as a practical matter, because utility cases can involve many parties and contentious issues, an inquiry into the level of rate case expenses can open the door to parties second guessing the company's management decisions (e.g., why does the company hire expensive outside lawyers rather than add additional in-house counsel to handle rate case matters), the hourly charges of attorneys, retainer agreements, "Lodestar" analyses, and cases that devolve into mind-numbing proceedings to examine invoices from lawyers and expert consultants and assess who did what, when they did it and whether it was prudent or not. Moreover, the problem of excessive rate case expenses is worsened and potentially never ends if, in every case, a separate proceeding is opened so that lawyers and expert witnesses are given license to question the fees charged by other lawyers and experts.

As a starting point, and as the Commission observed in its Order, it is important to recognize that recovery of legal expenses is not handled consistently between the judicial system and utility regulatory proceedings.

As the Commission points out in its Order, the "American" rule of civil and criminal litigation is that, absent a contractual or statutory requirement, parties to litigation bear their own attorneys' fees and the costs of prosecuting or defending their case.<sup>4</sup> Under the American rule, litigants typically hire lawyers and pay for the pursuit of their legal matters. Kansas courts follow the American rule<sup>5</sup> implying that Kansas courts believe it to be just and reasonable for litigants to bear their own attorneys' fees absent a statutory or contractual provision to the contrary.

It is also worth observing that lobbying expenses are consistently disallowed by this Commission.<sup>6</sup> Utility customers are not asked to pay for the company's expenses when it lobbies

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<sup>4</sup> In contrast, under the "English" rule the losing party pays the prevailing party's attorneys' fees.

<sup>5</sup> The Kansas Supreme Court in *Robinson v. City of Wichita Employees' Retirement Bd. of Trustees*, 241 P.3d 15, 24 (Kan. 2010) observed:

The "American Rule" is well established in Kansas so that, in the absence of statutory or contractual authorization, each party to the litigation is responsible for his or her own attorney fees, and the Kansas Act does not create an exception. See *Farm Bureau Mut. Ins. Co. v. Kurtenbach*, 265 Kan. 465, 479-80, 961 P.2d 53 (1998) (the "American rule" ... which is well established in Kansas, is that in the absence of statutory or contractual authorization, each party to litigation is responsible for his or her own attorney fees"); 8 Larson's Workers' Compensation Law § 133.01 ("The obligation to bear one's own legal fees, then, has become established as a necessary evil, which each client must contrive to bear as cheerfully as he or she can."); see also *Hodges v. Johnson*, 288 Kan. 56, 70, 199 P.3d 1251 (2009) ("In Kansas, courts are not permitted to award attorney fees without specific statutory authorization.").

<sup>6</sup> See, e.g., the adjustments made to the requested revenue requirements in *In the Matter of an Audit and General Rate Investigation of Wheat State Telephone Company, Inc.*, Order Docket No. 03-WHST-503-AUD (Sept. 9, 2003); and, *In the Matter of the Application of Western Resources, Inc for Approval to Make Certain Changes in its Electric Service*, Order on Reconsideration, Docket No. 01-WSRE-436-RTS (Sept 5, 2001).

the legislature or engages in political activities – those are viewed as expenses properly borne by investors. Yet, when the Commission acts in its legislative role and sets rates,<sup>7</sup> recovery of rate case expenses from customers have historically been allowed. I don't believe there is any logical reason why it is appropriate to disallow recovery of the expenses of lawyers and experts who lobby the legislature, but allow recovery of expenses associated with hiring lawyers and experts to appear before the Commission when it acts in its delegated legislative role.

This inconsistent treatment is an historical artifact of regulation that we live with today. I can only wonder what the regulatory environment would be like if litigants bore their own legal expenses as is the case with traditional litigation rather than have a common law “right” to pass them on to someone else.

Rate case expenses are usually small in comparison to the overall request made in a typical rate case and the amount ultimately awarded, but these expenses are important for at least three policy considerations.

1. First, recovery of rate case expenses – whether those are expenses of the company or the assessments by CURB or the Commission Staff – are functionally equivalent to a “tax” levied on utility services to pay for the advocacy of interests that may or may not be aligned with the utility customers’ or investors’ interests even though they ultimately pay for that advocacy.<sup>8</sup> In addition, rate case expenses have virtually no relationship to the quality of service, the reliability of the service, product development or anything that consumers or investors would readily recognize as economically valuable or something they would willingly pay for if asked to approve such expenses before they are incurred.
2. Second, while a certain level of rate case expenditures are necessary to meet the requirements of participating in the regulatory process, when a company incurs significant rate case expenses it makes a wager hoping to recover more (or avoid a bad result) by spending more on lawyers and expert witnesses to make its case in the hearing room. In the marketplace, firms make similar wagers with investments in new products, marketing plans and the like in hopes of attracting more business, but bear the financial consequences of failure. In the regulatory world, however, the burden of the financial consequences of a failed litigation effort is determined by regulators and courts.
3. Finally, the utility regulatory process is asymmetric and the level of rate case expenses are, to a large degree, driven by the litigation efforts of other public interest parties with various economic incentives to reach accommodation in the case and who do not face the costs their activities engender. For example, CURB and Staff were parties in this matter whose expenses are funded by assessments paid by utility companies. Non-profit, public interest

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<sup>7</sup> *Kansas Gas and Elec. Co. v. State Corp. Com'n*, 239 Kan. 483, 720 P.2d 1063, 1072 (Kan. 1986).

<sup>8</sup> Micro-economics texts routinely include a demonstration that taxes transfer money from the payors to the recipient and in the process result in a deadweight loss that makes society worse off – the higher the tax, the larger is the deadweight social loss. When taxes are used to fund public programs, one can argue that the social benefits of the tax-funded programs are equal to or greater than the tax revenues taken from consumers and producers. Rate case expenses and legal expenses, however, do not typically fund programs with broad social or public interest benefits.

interveners may be funded by contributions made to it by their members and exist primarily to engage in litigation to advance social objectives or just to participate in a particularly controversial public utility proceeding. If Staff or CURB or non-profit public interest interveners are particularly aggressive in pursuit of their positions, as KCP&L has argued in this case, that adds to the utility's rate case expenses and legal bills. But, the regulatory process is fundamentally asymmetric – if a utility loses in regulatory litigation, it bears the financial consequences of its loss; if a public interest intervener loses, it does not directly bear the financial consequences of the loss. In such instances, is it fair/just to restrict the recovery from customers of the legal and rate case expenses the utility might incur defending itself against such entities?

The Commission found no Kansas statute, and none were cited by the parties that deal directly with the appropriate level of rate case expenses or attorneys' fees for public utilities. The case law standards applicable to rate case expenses tend to be broad statements of general principle. Based on my review, Kansas Courts appear to assume that, unlike many other litigants who have no common law right to recover their legal fees from adverse parties, utilities have a right to recover prudently incurred rate case expenses and legal fees from customers.

The Commission's authority over a determination of rate case expenses is rooted in its obligation to determine and maintain "*just and reasonable*" rates. K.S.A. 66-101b directs the Commission to "establish and maintain just and reasonable rates when the same are reasonably necessary in order to maintain reasonably sufficient and efficient service from such electric public utilities." The statute also declares that "[e]very unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, charge or exaction is prohibited and is unlawful and void." The Kansas Supreme Court has plainly held that "All of these [state and federal utility] cases clearly support the general principle that a state regulatory agency, in setting a rate for a public utility, must have as its goal a rate fixed within the 'zone of reasonableness' after an application of a balancing test in which the interests of all concerned parties are considered."<sup>9</sup>

So, what does "*just and reasonable*" include and how wide is the "*zone of reasonableness*?" The common meaning of the words "just" and "reasonable" provides some obvious guidance. "Just" implies an assessment of fairness – is this a fair result? "Reasonable" connotes an assessment of what's prudent, rational or customary given the circumstances. I believe that both "just" and "reasonable" can include a comparison of how past cases were handled or similarly situated companies acted or were treated.

While the Commission, in previous orders and by its practice requires that parties conform to the provisions of Rule 1.5 of the Kansas Rules of Professional Conduct, the eight factors set out in Rule 1.5 were developed to create standards governing traditional litigation and the conduct of private attorneys. I do not believe these factors were intended to be the entire inquiry into or substitute for the public interest the Commission must make in matters before it. Recall that the "reasonable" recovery of attorneys' fees in traditional litigation is the American rule where parties bear 100% of their own legal expenses absent an agreement to the contrary.

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<sup>9</sup> *Gas and Elec. Co. v. State Corp. Com'n*, 239 Kan. 483, 720 P.2d 1063, 1072 (Kan. 1986).



As used in Rule 1.5, “reasonable” is defined by reference to a standard governing private performance and conduct and not “just and reasonable” under a public interest analysis. Said differently, “reasonable” under Rule 1.5 does not include an assessment of the factors traditionally included in an assessment of “just and reasonable” such as the zone of reasonableness, a public interest balancing of consumer and investor interests, an assessment of the financial ability of the public utility to continue to provide service, whether there is an excessive burden on consumers or whether the resultant recovery is unduly discriminatory.

To get a sense of what rate case expense awards had been previously approved by the Commission and gauge the “zone of reasonableness” I looked at past awards of rate case expenses as a simple percentage of the awarded rate case expense.

### Summary of Rate Case Expense Awards in Past KCC Cases

Docket # Source	Settled or Litigated?	Awarded Revenue Requirement	Awarded Rate Case Expenses	Rate Case Expenses as % of Revenue Requirement
08-ATMG-280-RTS Testimony of Bill Baldry	Settled	\$2,100,000	\$89,674 3 year amortization	4.3%
10-ATMG-495-RTS Testimony of Bill Baldry	Settled	\$3,855,000	\$61,589 3 year amortization	1.6%
05-AQLG-367-RTS Testimony of Justin Grady	Settled	\$2,700,000	\$522,414 3 year amortization	19.3%
05-EPDE-980-RTS Testimony of Bill Baldry	Settled	\$5,100,000	\$41,180 5 year amortization	0.8%
10-EPDE-314-RTS Testimony of Jeremy Croy	Settled	\$2,790,000	\$164,232 5 year amortization	5.9%
06-KGSG-1209-RTS Testimony of Justin Grady	Settled	\$52,000,000	\$745,602 3 year amortization	1.4%
06-MDWG-1027-RTS Testimony of Bill Baldry	Settled	\$3,350,000	\$129,624 3 year amortization	3.9%
08-MDWE-594-RTS Testimony of Laura Bowman	Settled	\$10,028,870	\$270,964 3 year amortization	2.7%
11-MDWE-609-RTS Testimony of Kristina Luke	Settled	\$1,800,000	\$76,784 3 year amortization	4.3%
05-WSEE-981-RTS Testimony of Mary Jo Struttman	Litigated	\$38,797,189	\$2,081,610 5 year amortization	5.4%

Docket # Source	Settled or Litigated?	Awarded Revenue Requirement	Awarded Rate Case Expenses	Rate Case Expenses as % of Revenue Requirement
08-WSEE-1041-RTS Testimony of Laura Bowman	Settled	\$130,000,000	\$1,365,443 3 year amortization	1.1%
09-WHLE-681-RTS Testimony of Andria Finger	Settled	\$4,819,343	\$38,162 5 year amortization	0.8%
11-MKEE-439-RTS Testimony of Kristina Luke	Settled	\$3,058,931	\$113,382 5 year amortization	3.7%
<b>Past Awards in Cases Involving KCP&amp;L</b>				
06-KCPE-828-RTS Testimony of Laura Bowman	Settled	\$29,000,000	\$1,196,430 4 year amortization	4.1%
07-KCPE-905-RTS Testimony of Laura Bowman	Settled	\$28,000,000	\$457,852 4 year amortization	1.6%
09-KCPE-246-RTS Testimony of John Weisensee in Docket No. 10-KCPE-415-RTS	Settled	\$59,000,000	\$2,300,000 4 year amortization	3.9%

Based on the above, with the exception of the Aquila case (05-AQLG-367-RTS), the Commission's past award of rate case expenses ranges from about 0.8% to 5.9% of the awarded revenue requirements. While the circumstances and risks in each case certainly differ, the awards listed above provide some guidance of what has been customary ("*reasonable*") in past cases, including cases that involved KCP&L. Because these awards have been previously approved by the Commission and generally found to be "*just and reasonable*" I believe there is a presumption that rate case expenses that fall within this range are within the "*zone of reasonableness.*"

Most of the cases presented in the table above settled, so, in a very real sense, they represented agreement between the litigants about the "*reasonableness*" of the proposed recovery which included rate case expenses. Said differently, if the cases that settled included an unreasonable figure for rate case expenses – either exorbitant or grossly inadequate – the case would not likely have settled.

An argument could be made that an "apples-to-apples" comparison of the rate case expenses of settled cases with the claimed expenses in this litigated case should only include KCP&L's pre-hearing charges. As shown in Attachment A to the Commission's Order that summarizes the claimed expenditures in each phase of this proceeding, roughly \$4.6 million in claimed charges were incurred prior to the hearing (excluding CURB and Staff's assessments), which is about 66% of the total rate case expense claimed by KCP&L associated with its efforts in this proceeding. If one excludes KCP&L's hearing and post-hearing expenses, and assumes that the CURB and Staff pre-hearing assessments were \$939,069 (66% of the final amount of \$1,422,832), the total rate case expenses in the uncontested portion of this case comparable to the

historical rate case expenses in settled cases is about \$5.5 million. \$5.5 million is 25% of the awarded revenue requirement of \$21.8 million in this case and about 11% of the \$50.8 million requested by KCP&L. Thus, even after making an adjustment to distinguish this litigated case with the settled cases, this case is far from the historical norm awarded by the Commission even accounting for the difference between settled and litigated cases.

The proportionally largest awarded rate case expense was 19% of the awarded revenue requirement, a case involving Aquila's provision of natural gas services to its customers. Like this case, it involved many parties and interveners. Like this case, it resulted in the utility receiving a fraction of the requested revenue requirement (44% for Aquila vs. 39% for KCP&L). Thus, the rate case expenses in the Aquila case were about 19% of the awarded revenue requirement (\$2.7 million) and about 9% of the requested revenue requirement (\$6.2 million).<sup>10</sup> If the results of the settled Aquila case were applied to this matter, the awarded rate expenses would be between \$4.1 million (19% of the revenue requirement of \$21.8 million awarded to KCP&L) and \$4.6 million (9% of KCP&L's requested revenue requirement of \$50.8 million). The amount requested in this case – \$9 million – is about double these amounts, so this case represents an aberration even when compared to the proportionally largest award made by the Commission.

The Commissioners also bring their individual experiences to bear in assessing what's just and reasonable. In my experience, managing to a budget involved some basic activities that were missing in this case:

1. When firms manage to a budget, an aggregate limit is set for expenses, the limit is well documented, and managers' performance is assessed against whether they met this limit. In this case, the only estimate of legal expenses was set early on at \$2.1 million and then that estimate appears to have been ignored. No documentation of tracking against the budget or basic "how are we doing" monitoring appears to have been developed as the case proceeded. The irony of this case is that KCP&L appears to have very sophisticated systems for tracking and managing construction activities and costs, but nothing comparable for tracking and managing rate case expenses.
2. When firms are actively managing to a budget, bills from outside vendors are closely scrutinized and adjustments are common. As in-house counsel, I regularly disputed the billings from outside lawyers and would call them and demand adjustments if the work they performed seemed inappropriate to the task or excessive. As an outside lawyer, my clients often called me to ask what I did, why they were being charged for some work efforts and to demand an adjustment. This case is remarkable to me because even though six different law firms with a total of 47 lawyers and consultants engaged by those firms billed a total of more 16,000 hours, and eight outside consulting firms with a total of 46 individual time keepers billed a total of 9,700 hours, virtually no billing adjustments were made.

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<sup>10</sup> In addition, the rate case award is higher because Staff used a normalized rate case expense amount rather than actuals through a cut-off date. See Direct Testimony of Justin Grady at p. 10.

3. Managing to a budget means that someone – usually a company employee – is rewarded or punished for meeting or failing to meet the budget. Responsible managers typically have an incentive to closely monitor spending. In private sector firms, it is common to have monthly reports of how spending compares with the budget and to tell vendors to stop working when it is apparent that their bills will exceed the budget. In this case, no one appeared accountable for meeting or beating the rate case expense budget and tracking of budgeted amounts seems to be non-existent.
4. When a firm actively manages its legal/consulting expenses, projects and billings are usually supported by detailed documentation. In private practice, I usually sent clients a generic retainer agreement that spelled out rates and billing practices. When clients asked me to do something for which significant work effort was involved, I would send the client a letter or an e-mail that memorialized our conversation and my understanding of the work the client wished me to do along with my estimate of the work effort and charges that would be involved. My invoices were often a narrative of the work I had done, the expenses incurred and the hourly charges. In this case, some large, sophisticated firms had no retainer agreement and block billing seemed to be the rule rather than the exception. In addition, virtually every lawyer raised his/her hourly rate in the midst of the case without any explanation or documentation in the form of an agreement with their client.

A major explanatory difference between my experiences and the circumstances of this case, however, is that the firms I worked for were firms that were not guaranteed recovery of their expenses through regulation, but when they spent money on litigation, it was their own money, and not something that could be passed on to someone else. Likewise, my clients in private practice were spending their own money on legal efforts. In Friedman's hierarchy, my clients' and employers' frame of reference was largely in spending categories 1 and 2.

I believe that the excesses of this case arose because of the incentives created by traditional regulation. The Commission has historically allowed 100% recovery of rate case expenses (except when spending exceeded some unquantifiable "prudent" standard or the Rule 1.5 standard), Kansas case law supports the notion that regulated firms have a right to recover their rate case expenses rather than follow the American rule that the Courts apply to everyone else, KCP&L relies on contractors and outside counsel rather than employees to prosecute its regulatory proceedings and the major interveners – CURB and Staff – are both fee funded agencies where their expenses are passed along to ratepayers. In Friedman's hierarchy, everyone is spending someone else's money and has no incentive to minimize that spending or direct insight into the benefits of such spending.

It is important to emphasize that excessive rate case expenses are not just a phenomena that affects consumers. To the extent that excessive rate case expenses are disallowed, they raise costs that reduce the returns realized by investors. In this case, it would have been interesting to see how investors might have reacted to a management announcement that it was planning to spend \$9 million of investors' money on lawyers and consultants in a \$50.8 million rate case and that 70% of that spending would be devoted to rebutting the testimony of a single witness, Walter Drabinski.

In the regulatory environment, excessive legal or rate case expenses are not naturally controlled by the discipline of the market. Investors don't punish utility managers for spending

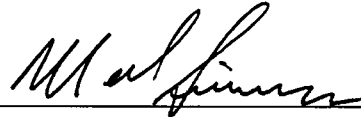
too much on legal fees and rate cases so long as those expenses are automatically flowed through to rates – they are gambling with someone else’s money. Inflating prices with excessive legal and rate case expenses will not be punished in the market by more cost efficient new entrants offering lower-priced alternatives because government flatly prohibits competitive entry. The regulatory theory is that a single, regulated provider can and will provide service at lower costs than multiple, competing providers and that regulators can and will prevent imprudent expenditures. In my brief tenure as a Commissioner, I have not seen large numbers of lawyers, experts and consultants in cases involving regulated competitive industries, such as telecom, trucking, and oil and gas.

It’s surprising to me that these excesses have not arisen before now.

I would have preferred that the Commission use this case to establish an explicit policy with respect to rate case expenses that would provide guidance to others in future cases. However, not having input from a broad base of affected parties makes establishing policy in narrow cases problematic and I respect the Commission’s decision to not articulate an explicit policy. For what it is worth, here is the policy I recommend be applied in future cases:

- a. Rate case and legal expenses that are assessed by the Commission, its Staff and CURB and thus, cannot be avoided by the utility, are recoverable in rates paid by consumers. To deny recovery of these unavoidable, uncontrollable costs would be unjust and unreasonable, and recovery is mandated by statute.
- b. If a case primarily involves questions that do not implicate the public interest, but are matters that are fundamentally matters of private interests (*e.g.*, a case involving a contest between a utility and a single customer), rate case expenses and legal expenses should be borne by the parties as they are in private litigation and borne by the litigants absent a contractual or statutory requirement to the contrary.
- c. If proposed rate case expenses fall within the “*zone of reasonableness*” as defined by the range of awards as a percentage of the awarded revenue requirement previously approved by the Commission (*i.e.*, generally between 0.8% and 5.9% of the awarded revenue requirement from past Commission decisions), the Commission will presume that such expenses are “*just and reasonable*” consistent with its past findings and awards. Those challenging such a presumption would bear the burden of presenting sufficient evidence to demonstrate that the award sought is adverse to the public interest. Such a presumption seems efficient in that it will avoid future cases devolving into discovery battles, second guessing management decisions and contested litigation over attorneys’ fees and rate case expenses as occurred in this proceeding.
- d. If rate case expense falls outside the presumptive “*zone of reasonableness*,” then the utility bears the burden of showing that recovery from customers is “*just and reasonable*” which, consistent with past Commission practice, requires the following:
  - i. Sufficient evidence showing that the requested expenses are reasonable using the metric established by Rule 1.5 of the Kansas Rules of Professional Conduct, that the requested expenses are rational and customary given the circumstances of the case (“*reasonable*”) and that it is fair (“*just*”) to pass such expenses on to customers;
  - ii. Evidence showing that recovery of the requested expenses is “*just and reasonable*” and in the public interest as might be demonstrated by evidence to assess: (1) the

- impact on the financial ability of the public utility to continue to provide service; (2) the burden on consumers; and/or (3) whether the recovery is unduly discriminatory;
- iii. As required by the Commission in its past decisions, the requested expenses must be supported by an itemized statement of the nature of the activity or services performed, the amount of time expended for each activity or service, and the identity of the attorney or other personnel that performed each activity or service; and,
  - iv. As described by the Commission in its past decisions, the Commission may reduce an attorney fee award if the recording of tasks worked on is insufficient, if multiple attorneys duplicate their effort, when time is expended on activities unrelated to issues or litigation, and for time spent on travel.



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Mark Sievers -- Chairman

		Application		Discovery		Rebuttal		Hearing		Post-Hearing		Total	
		July 2009 - Dec 2009		Jan 2010 - May 2010		Jun 2010 - July 2010		Aug 2010		Sept, Oct, Nov 2010		By Attorney/Consultant	
		Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges
<b>LEGAL SERVICE PROVIDERS</b>													
Cafer Law Office	1. Glenda Cafer	524.00	\$142,925.00	228.25	\$68,475.00	314.00	\$94,200.00	268.75	\$80,625.00	304.25	\$91,275.00	1,639.25	\$477,500.00
Duane Morris	1. C.W. Whitney	4.12	\$2,369.00									4.12	\$2,369.00
	2. A. Bates	125.36	\$60,172.80	33.00	\$16,005.00	110.40	\$53,544.00	113.00	\$54,805.00	13.40	\$6,499.00	395.16	\$191,025.80
	3. J.D. Cook	100.20	\$43,086.00	12.20	\$5,490.00	48.50	\$21,825.00	17.70	\$7,965.00			178.60	\$78,366.00
	4. C. Dougherty	0.20	\$42.00									0.20	\$42.00
	5. D.A. Nosse					6.40	\$1,376.00					6.40	\$1,376.00
	Total for Duane Morris	229.88	\$105,669.80	45.20	21,495.00	165.30	\$76,745.00	130.70	\$62,770.00	13.40	\$6,499.00	584.48	\$273,178.80
Morgan Lewis	1. A.J. Conway-Hatch	1.40	\$756.00									1.40	\$756.00
	2. F.F. Fielding	1.68	\$1,436.40									1.68	\$1,436.40
	3. S.P. Mahinka	1.40	\$1,260.00									1.40	\$1,260.00
	4. B. VanGelder	1.40	\$924.00			5.80	\$3,828.00	146.20	\$96,492.00	1.30	\$858.00	154.70	\$102,102.00
	Total for Morgan Lewis	5.88	\$4,376.40	0.00	0.00	5.80	\$3,828.00	146.20	\$96,492.00	1.30	\$858.00	159.18	\$105,554.40
Polsinelli Shughart	1. Frank Caro	430.60	\$166,312.50	236.70	\$92,313.00	373.90	\$145,821.00	291.80	\$113,802.00	366.90	\$146,760.00	1,699.90	\$665,008.50
	2. Ann Callenbach	228.50	\$63,020.00	159.60	\$44,688.00	236.90	\$66,332.00	272.20	\$76,216.00	230.70	\$69,210.00	1,127.90	\$319,466.00
	3. B.L. Kane	303.60	\$63,615.25	159.70	\$34,335.50	297.50	\$63,962.50	221.10	\$47,536.50	420.20	\$98,747.00	1,401.25	\$308,196.75
	4. L.A. Hagedorn	47.10	\$8,713.50	63.85	\$11,812.25	253.70	\$46,934.50	247.25	\$45,741.25	380.15	\$76,030.00	992.05	\$189,231.50
	5. S.A. Damarco	17.10	\$1,710.00									17.10	\$1,710.00
	6. T.J. Sear	3.70	\$1,258.00	6.40	\$2,176.00							10.10	\$3,434.00
	7. S.C. Willman							1.75	\$612.50			1.75	\$612.50
	9. K.D. Stohs	15.00	\$3,450.00							7.80	\$1,950.00	22.80	\$5,400.00
	10. K.J. Breer									1.30	\$357.50	1.30	\$357.50
	11. A.F. Ruup	1.10	\$385.00									1.10	\$385.00
	12. A. Morgan	36.60	\$10,106.00									36.60	\$10,106.00
	13. W.W. Sneed	3.00	\$975.00									3.00	\$975.00
	Total for Polsinelli	1,086.30	\$319,545.25	626.25	\$185,324.75	1,162.00	\$323,050.00	1,034.10	\$283,908.25	1,407.05	\$393,054.50	5,314.85	\$1,504,882.75

		Application		Discovery		Rebuttal		Hearing		Post-Hearing		Total	
		July 2009 - Dec 2009		Jan 2010 - May 2010		Jun 2010 - July 2010		Aug 2010		Sept, Oct, Nov 2010		By Attorney/Consultant	
		Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges
Schiff Hardin	1. Ken Roberts	136.75	\$75,896.25	40.50	\$22,477.50	292.75	\$162,476.25	206.50	\$114,607.50	163.50	\$90,742.50	840.00	\$466,200.00
	2. Carrie Okizaki	189.25	\$85,162.50	66.25	\$29,812.50	386.00	\$173,700.00	160.00	\$72,000.00	196.05	\$88,222.50	997.55	\$448,897.50
	3. Eric Gould	347.00	\$102,365.00	72.00	\$21,240.00	496.00	\$146,320.00	233.25	\$68,808.75	210.80	\$62,186.00	1,359.05	\$400,919.75
	4. Amanda Schermer	157.00	\$51,810.00	13.75	\$4,537.50	278.75	\$91,987.50	197.00	\$65,010.00	184.10	\$60,753.00	830.60	\$274,098.00
	5. Aaron Hitchcock	36.50	\$6,570.00									36.50	\$6,570.00
	6. Othiel Glover	23.00	\$3,220.00	54.75	\$7,665.00	230.75	\$32,305.00	71.00	\$9,940.00			379.50	\$53,130.00
	7. Kevin Kolton			1.00	\$520.00	86.00	\$44,720.00	24.75	\$12,870.00			111.75	\$58,110.00
	8. Virgil Montgomery					81.50	\$42,380.00	30.00	\$15,600.00			111.50	\$57,980.00
	9. H. Hennig Rowe					66.25	\$28,487.50			7.25	\$3,117.50	73.50	\$31,605.00
	10. Ned Markey					167.50	\$41,875.00	21.75	\$5,437.50			189.25	\$47,312.50
	11. Sean Hoadley			1.25	\$243.75	88.00	\$17,160.00	96.50	\$18,817.50			185.75	\$36,221.25
	12. Thomas Priebe					20.75	\$2,386.25					20.75	\$2,386.25
	13. J. Wilson			43.42	\$13,026.00	279.50	\$83,850.00	75.00	\$22,500.00			397.92	\$119,376.00
	14. Meggan Witte					220.00	\$11,000.00	33.50	\$1,675.00			253.50	\$12,675.00
	15. Beverly Maus			148.41	\$7,420.50	318.50	\$15,925.00	101.50	\$5,075.00			568.41	\$28,420.50
	16. Steve Jones			290.13	\$79,784.38	226.25	\$62,218.75	154.50	\$42,487.50			670.88	\$184,490.63
	17. Kathryn Hejdl			162.88	\$16,287.50	71.75	\$7,175.00	29.00	\$2,900.00			263.63	\$26,362.50
	18. Project Control Serv			24.50	\$3,062.50	3.50	\$437.50	13.50	\$1,687.50			41.50	\$5,187.50
	19. Meyer Construction					737.85	\$273,032.50	438.50	\$171,388.35	36.25	\$16,312.50	1,212.60	\$460,733.35
	20. Shawn Hoadley			1.25	\$187.50							1.25	\$187.50
	Total for Schiff		889.50	\$325,023.75	920.08	\$206,264.63	4,051.60	\$1,237,436.25	1,886.25	\$630,804.60	797.95	\$321,334.00	8,545.38
SNR Denton	1. Zobrist	3.00	\$1,425.00			0.30	\$145.50					3.30	\$1,570.50
	2. R. Steiner	18.25	\$6,661.25	47.18	\$17,220.70	78.75	\$28,743.75					144.18	\$52,625.70
	3. S. Cunningham					6.00	\$2,160.00	9.90	\$3,564.00			15.90	\$5,724.00
	4. L. Gilbreath	0.50	\$87.50									0.50	\$87.50
	Total for SNR Denton	21.75	\$8,173.75	47.18	\$17,220.70	85.05	\$31,049.25	9.90	\$3,564.00	0.00	\$0.00	163.88	\$60,007.70
Total for Legal Services Providers		2,757.31	\$905,713.95	1,866.96	\$498,780.08	5,783.75	\$1,766,308.50	3,475.90	\$1,158,163.85	2,523.95	\$813,020.50	16,407.02	\$5,141,986.88



Rate Case Expense

Summary of Hourly Fees by Provider by Activity Time Frame (Disbursements are excluded)

		Application July 2009 - Dec 2009		Discovery Jan 2010 - May 2010		Rebuttal Jun 2010 - July 2010		Hearing Aug 2010		Post-Hearing Sept, Oct, Nov 2010		Total By Attorney/Consultant	
		Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges
<b>CONSULTANTS</b>													
Black & Veatch	1. Larry Loos	170.00	\$23,567.75	79.00	\$11,222.04	76.00	\$10,536.17	52.00	\$16,055.00	21.00	\$6,483.75	398.00	\$67,864.72
	2. Robert Brady	49.00	\$6,793.06	6.00	\$831.80	9.00	\$1,247.70					64.00	\$8,872.57
	3. Gregory Macias	46.00	\$4,905.51			5.00	\$533.21					51.00	\$5,438.71
	4. Mathew Powis	148.00	\$11,995.03									148.00	\$11,995.03
	Total for Black & Veatch	413.00	\$47,261.34	85.00	\$12,053.85	90.00	\$12,317.08	52.00	\$16,055.00	21.00	\$6,483.75	661.00	\$94,171.02
FINANCO, Inc.	1. Sam Hadaway	23.50	\$9,400.00			55.25	\$22,100.00	34.00	\$13,600.00	32.25	\$12,900.00	145.00	\$58,000.00
	2. Heidebrecht	28.00	\$7,000.00			40.00	\$10,000.00	10.00	\$2,500.00	6.00	\$1,500.00	84.00	\$21,000.00
	Total for FINANCO	51.50	\$16,400.00	0.00	\$0.00	95.25	\$32,100.00	44.00	\$16,100.00	38.25	\$14,400.00	229.00	\$79,000.00
Gannet Fleming, Inc.	1. John Spanos	63.00	\$6,240.00	26.00	\$2,535.00	26.00	\$3,022.50	44.00	\$4,290.00	41.00	\$3,997.50	200.00	\$20,085.00
	2. Cheryl Rutter	5.00	\$280.00	1.50	\$60.00	1.00	\$60.00	1.50	\$60.00	2.00	\$80.00	11.00	\$540.00
	3. Krista McCormick	25.00	\$1,060.00	7.50	\$300.00	4.50	\$180.00	5.00	\$200.00	3.00	\$120.00	45.00	\$1,860.00
	4. Richard Clarke	3.00	\$585.00									3.00	\$585.00
	5. Ned Allis	304.00	\$16,050.00	7.00	\$367.50	2.00	\$210.00	2.00	\$105.00			315.00	\$16,732.50
	6. Samantha Marino	1.50	\$100.00							5.00	\$262.50	6.50	\$362.50
	7. Frederick Johnston	1.00	\$55.00	3.00	\$172.50	8.50	\$805.00	10.00	\$575.00	5.00	\$287.50	27.50	\$1,895.00
Total for Gannet Flemming, Inc.	402.50	\$24,370.00	45.00	\$3,435.00	42.00	\$4,277.50	62.50	\$5,230.00	56.00	\$4,747.50	608.00	\$42,060.00	
Mgt. App. Consulting	1. Paul Normand	192.00	\$37,440.00	4.00	\$780.00	34.00	\$6,630.00	12.00	\$2,340.00	31.00	\$6,045.00	273.00	\$53,235.00
	2. James Harrison	28.75	\$5,606.25					1.00	\$195.00			29.75	\$5,801.25
	3. Debbie Gajewski	141.00	\$25,380.00	4.00	\$720.00	18.00	\$3,240.00	9.50	\$1,710.00	1.00	\$180.00	173.50	\$31,230.00
	4. Michael Morganti	47.00	\$8,460.00									47.00	\$8,460.00
	5. Michael Normand	56.50	\$4,520.00									56.50	\$4,520.00
Total for Management Applications Consulting	465.25	\$81,406.25	8.00	\$1,500.00	52.00	\$9,870.00	22.50	\$4,245.00	32.00	\$6,225.00	579.75	\$103,246.25	

Summary of Hourly Fees by Provider by Activity Time Frame (Disbursements are excluded)

		Application		Discovery		Rebuttal		Hearing		Post-Hearing		Total	
		July 2009 - Dec 2009		Jan 2010 - May 2010		Jun 2010 - July 2010		Aug 2010		Sept, Oct, Nov 2010		By Attorney/Consultant	
		Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges
NextSource Inc.	1. Chris Davidson	415.25	\$29,619.88	215.00	\$16,067.90	316.50	\$25,666.13	185.75	\$15,289.13	87.25	\$6,987.75	1,219.75	\$93,630.77
	2. Melissa McEachron	11.90	\$321.66	294.25	\$8,105.89	109.50	\$3,083.65	22.00	\$618.20	101.25	\$2,919.03	538.90	\$15,048.43
	3. Chris Giles	270.00	\$67,500.00	243.00	\$60,750.00	284.00	\$71,000.00	208.50	\$52,125.00	85.00	\$21,250.00	1,090.50	\$272,625.00
	4. Forrest Archibald	61.00	\$6,832.00	45.25	\$5,068.00							106.25	\$11,900.00
	5. Marty Jenson	93.75	\$3,263.87	61.00	\$2,136.03	17.50	\$601.65	51.50	\$1,770.57	11.00	\$378.18	234.75	\$8,150.29
	6. Catherine Schubert	4.75	\$117.34									4.75	\$117.34
	7. Alan Yee	21.25	\$1,880.63	11.25	\$995.63	8.00	\$723.60					40.50	\$3,599.85
	8. Kelly Bradfield	3.00	\$152.10							0.25	\$12.49	3.25	\$164.59
	9. George Mislavovich	21.50	\$2,046.80	1.50	\$145.80							23.00	\$2,192.60
	10. Donald Wilker	8.25	\$730.13	19.99	\$1,769.12							28.24	\$2,499.24
	11. Meagan Bange	13.00	\$710.58	11.50	\$664.04	29.00	\$1,636.38					53.50	\$3,011.00
	12. Michelle Young	14.75	\$591.50	12.00	\$482.12							26.75	\$1,073.62
	13. Chris Stainaker	25.49	\$881.70	30.74	\$1,076.27							56.23	\$1,957.97
	14. Denise Williams			0.25	\$10.50							0.25	\$10.50
	Total for NextSource	963.89	\$114,648.16	945.73	\$97,271.28	764.50	\$102,711.40	467.75	\$69,802.90	284.75	\$31,547.45	3,426.62	\$415,981.19
Pegasus Global Holdings	1. K. Nielsen	327.56	\$96,630.20	127.79	\$37,699.23	297.80	\$87,851.00	160.00	\$47,200.00	62.50	\$18,437.50	975.65	\$287,817.93
	2. P. Galloway	249.58	\$73,626.10	26.88	\$7,929.01	190.60	\$56,227.00	106.90	\$31,535.50			573.96	\$169,317.61
	3. J. Dignum	405.25	\$119,548.75	142.77	\$42,116.27	317.85	\$93,765.75	267.50	\$78,912.50	9.00	\$2,655.00	1,142.37	\$336,998.27
	4. G. Tucker	41.54	\$12,254.30	7.98	\$2,353.51	90.90	\$26,815.50	65.50	\$19,322.50	16.60	\$4,897.00	222.52	\$65,642.81
	5. J. Owen	120.30	\$35,488.50	33.94	\$10,012.30	89.00	\$26,255.00					243.24	\$71,755.80
	6. B. Pearson	61.00	\$9,150.00	3.19	\$478.50	195.50	\$29,325.00	21.95	\$3,292.50			281.64	\$42,246.00
	7. J. Black	90.50	\$13,575.00	32.60	\$4,890.00	159.50	\$23,925.00					282.60	\$42,390.00
	8. C. Kennedy					107.00	\$16,050.00					107.00	\$16,050.00
	9. K. Williams					9.50	\$1,425.00					9.50	\$1,425.00
	Total for Pegasus Global Holdings	1,295.73	\$360,272.85	375.15	\$105,478.82	1,457.65	\$361,639.25	621.85	\$180,263.00	88.10	\$25,989.50	3,838.48	\$1,033,643.42
Siemens Energy	1. Edrissa Cham	108.00	\$4,725.00									108.00	\$4,725.00
	2. Octavio Guterrez	137.00	\$7,706.25									137.00	\$7,706.25
	3. Subcontractor Labor	124	\$7,595.00									124.00	\$7,595.00
	Total of Siemens	369.00	\$20,026.25									369.00	\$20,026.25
Towers Watson	1. Ken Vogel					4.5	\$2,812.50	10	\$6,250.00	2	\$1,300.00	16.50	\$10,362.50
	2. Jason Benbow					11	\$5,115.00	3	\$1,395.00	3.5	\$1,785.00	17.50	\$8,295.00
	Total for Towers Watson					15.5	\$7,927.50	\$13.00	\$7,645.00	\$5.50	\$3,085.00	\$34.00	\$18,657.50
Total for Consultants		3,960.87	\$664,384.85	1,458.88	\$219,738.94	2,516.90	\$530,842.74	1,283.60	\$299,340.90	525.60	\$92,478.20	9,745.85	\$1,806,785.63

Docket No. 10-KCPE-415-RTS

Rate Case Expense

Summary of Hourly Fees by Provider by Activity Time Frame (Disbursements are excluded)

	Application		Discovery		Rebuttal		Hearing		Post-Hearing		Total	
	July 2009 - Dec 2009		Jan 2010 - May 2010		Jun 2010 - July 2010		Aug 2010		Sept, Oct, Nov 2010		By Attorney/Consultant	
	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges
TOTAL FOR LEGAL SERVICES	2,757.31	\$905,713.95	1,866.96	\$498,780.08	5,783.75	\$1,766,308.50	3,475.90	\$1,158,163.85	2,523.95	\$813,020.50	16,407.02	\$5,141,986.88
TOTAL FOR CONSULTANTS	3,960.87	\$664,384.85	1,458.88	\$219,738.94	2,516.90	\$530,842.74	1,283.60	\$299,340.90	525.60	\$92,478.20	9,745.85	\$1,806,785.63
GRAND TOTAL	6,718.18	\$1,570,098.80	3,325.84	\$718,519.02	8,300.65	\$2,297,151.24	4,759.50	\$1,457,504.75	3,049.55	\$905,498.70	26,152.87	\$6,948,772.50

Source: Rate Case Proceeding Direct Testimony of John P. Weisensee dated May 6, 2011. Schedules JPW2010-11 through JPW2010-25

**CERTIFICATE OF SERVICE**

JAN 18 2012

10-KCPE-415-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order on Rate Case Expense was served by electronic mail this 18th day of January, 2012, to the following parties who have waived receipt of follow-up hard copies:

JAMES G. FLAHERTY, ATTORNEY  
ANDERSON & BYRD, L.L.P.  
216 SOUTH HICKORY  
PO BOX 17  
OTTAWA, KS 66067  
Fax: 785-242-1279  
jflaherty@andersonbyrd.com

MICHAEL E. AMASH, ATTORNEY  
BLAKE & UHLIG PA  
SUITE 475 NEW BROTHERHOOD BLDG  
753 STATE AVE.  
KANSAS CITY, KS 66101  
Fax: 913-321-2396  
mea@blake-uhlig.com

JAMES R. WAERS, ATTORNEY  
BLAKE & UHLIG PA  
SUITE 475 NEW BROTHERHOOD BLDG  
753 STATE AVE.  
KANSAS CITY, KS 66101  
Fax: 913-321-2396  
jrw@blake-uhlig.com

GLEND A CAFER, ATTORNEY  
CAFER LAW OFFICE, L.L.C.  
3321 SW 6TH STREET  
TOPEKA, KS 66606  
Fax: 785-233-3040  
gcafer@sbcglobal.net

NIKI CHRISTOPHER, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
n.christopher@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

C. STEVEN RARRICK, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
s.rarrick@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

DELLA SMITH  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
d.smith@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

SHONDA SMITH  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
sd.smith@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

DAVID SPRINGE, CONSUMER COUNSEL  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
d.springe@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

BLAKE MERTENS  
EMPIRE DISTRICT ELECTRIC COMPANY  
602 S JOPLIN AVE (64801)  
PO BOX 127  
JOPLIN, MO 64802  
Fax: 417-625-5169  
bmertens@empiredistrict.com

**CERTIFICATE OF SERVICE**

JAN 18 2012

10-KCPE-415-RTS

KELLY WALTERS, VICE PRESIDENT  
EMPIRE DISTRICT ELECTRIC COMPANY  
602 S JOPLIN AVE (64801)  
PO BOX 127  
JOPLIN, MO 64802  
Fax: 417-625-5173  
kwalters@empiredistrict.com

C. EDWARD PETERSON, ATTORNEY  
FINNEGAN CONRAD & PETERSON LC  
1209 PENNTOWER OFFICE CENTER  
3100 BROADWAY  
KANSAS CITY, MO 64111  
Fax: 816-756-0373  
epeters@fcplaw.com

DAVID WOODSMALL, ATTORNEY  
FINNEGAN CONRAD & PETERSON LC  
1209 PENNTOWER OFFICE CENTER  
3100 BROADWAY  
KANSAS CITY, MO 64111  
Fax: 816-756-0373  
dwoodsmall@fcplaw.com

DARRELL MCCUBBINS, BUSINESS MANAGER  
IBEW LOCAL UNION NO. 1464  
PO BOX 33443  
KANSAS CITY, MO 64120  
Fax: 816-483-4239  
local1464@aol.com

JERRY ARCHER, BUSINESS MANAGER  
IBEW LOCAL UNION NO. 1613  
6900 EXECUTIVE DR  
SUITE 180  
KANSAS CITY, MO 64120  
local1613@earthlink.net

BILL MCDANIEL, BUSINESS MANAGER  
IBEW LOCAL UNION NO. 412  
6200 CONNECTICUT  
SUITE 105  
KANSAS CITY, MO 64120  
Fax: 816-231-5515  
bmcdaniel412@msn.com

DENISE M. BUFFINGTON, CORPORATE COUNSEL  
KANSAS CITY POWER & LIGHT COMPANY  
ONE KANSAS CITY PLACE 1200 MAIN STREET (64105)  
P.O. BOX 418679  
KANSAS CITY, MO 64141-9679  
Fax: 816-556-2787  
denise.buffington@kcpl.com

ROGER W. STEINER, MISSOURI CORPORATE COUNSEL  
KANSAS CITY POWER & LIGHT COMPANY  
ONE KANSAS CITY PLACE 1200 MAIN STREET (64105)  
P.O. BOX 418679  
KANSAS CITY, MO 64141-9679  
Fax: 816-556-2787  
roger.steiner@kcpl.com

MARY TURNER, DIRECTOR, REGULATORY AFFAIRS  
KANSAS CITY POWER & LIGHT COMPANY  
ONE KANSAS CITY PLACE 1200 MAIN STREET (64105)  
P.O. BOX 418679  
KANSAS CITY, MO 64141-9679  
Fax: 816-556-2110  
mary.turner@kcpl.com

MATTHEW SPURGIN, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3167  
m.spurgin@kcc.ks.gov  
\*\*\*Hand Delivered\*\*\*

JOHN P. DECOURSEY, DIRECTOR, LAW  
KANSAS GAS SERVICE, A DIVISION OF ONEOK, INC.  
7421W 129TH STREET (66213-2634)  
PO BOX 25957  
SHAWNEE MISSION, KS 66225-5957  
Fax: 913-319-8622  
jdecoursey@kgas.com

WALKER HENDRIX, DIR, REG LAW  
KANSAS GAS SERVICE, A DIVISION OF ONEOK, INC.  
7421W 129TH STREET (66213-2634)  
PO BOX 25957  
SHAWNEE MISSION, KS 66225-5957  
Fax: 913-319-8622  
whendrix@oneok.com

**CERTIFICATE OF SERVICE**

JAN 18 2012

10-KCPE-415-RTS

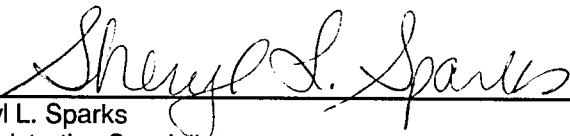
JO SMITH, SR OFFICE SPECIALIST  
KANSAS GAS SERVICE, A DIVISION OF ONEOK, INC.  
7421 W 129TH STREET (66213-2634)  
PO BOX 25957  
SHAWNEE MISSION, KS 66225-5957  
Fax: 913-319-8622  
josmith@oneok.com

ANNE E. CALLENBACH, ATTORNEY  
POLSINELLI SHUGHART  
6201 COLLEGE BLVD STE 500  
OVERLAND PARK, KS 66211-2435  
Fax: 913-451-6205  
acallenbach@polsinelli.com

FRANK A. CARO, JR., ATTORNEY  
POLSINELLI SHUGHART  
6201 COLLEGE BLVD STE 500  
OVERLAND PARK, KS 66211-2435  
Fax: 913-451-6205  
fcaro@polsinelli.com

LUKE A. HAGEDORN, ATTORNEY  
POLSINELLI SHUGHART  
6201 COLLEGE BLVD STE 500  
OVERLAND PARK, KS 66211-2435  
Fax: 913-451-6205  
lhagedorn@polsinelli.com

JAMES P. ZAKOURA, ATTORNEY  
SMITHYMAN & ZAKOURA, CHTD.  
7400 W 110TH ST STE 750  
OVERLAND PARK, KS 66210-2362  
Fax: 913-661-9863  
jim@smizak-law.com

  
\_\_\_\_\_  
Sheryl L. Sparks  
Administrative Specialist

ORDER MAILED JAN 18 2012

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Chairman Mark Sievers  
Commissioner Ward Loyd  
Commissioner Thomas E. Wright

In the Matter of the Application of Kansas )  
City Power & Light Company to Modify its ) Docket No. 10-KCPE-415-RTS  
Tariffs to Continue the Implementation of its )  
Regulatory Plan. )

**ORDER ON RATE CASE EXPENSE**

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The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and being

fully advised of all matters of record, the Commission summarizes the arguments of the parties and finds and concludes as follows:

1. Kansas City Power & Light Co. (KCP&L or the Company) filed this rate case on December 17, 2009, as its fourth and final rate case in a series contemplated in the Stipulation and Agreement approved in Docket No. 04-KCPE-1025-GIE (04-1025). In the Commission's decision issued November 22, 2010, KCP&L was awarded a revenue increase of \$21,846,202, which included rate case expense totaling \$5,669,712.<sup>1</sup> Several Petitions for Reconsideration were filed, which were ruled upon by the Commission. Subsequently, in an Order issued February 21, 2011, the Commission granted reconsideration of its prior decisions on rate case expense for this docket, reopened the administrative record to receive evidence on this issue, limited parties participating in the reconsideration process to KCP&L, Citizens' Utility Ratepayer Board (CURB) and the Commission's staff (Staff), allowed additional discovery on this issue, directed filing of appropriate evidence regarding this issue, ordered an evidentiary hearing be scheduled, and designated a new Prehearing Officer to address this issue.<sup>2</sup> Further requests to reconsider this decision were denied.<sup>3</sup> This Order decides the issue of rate case expense.

2. In this proceeding on reconsideration, KCP&L now requests total rate case expense of \$9,033,136 for this docket.<sup>4</sup> This figure includes \$1,422,832 for CURB and Staff costs that were

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<sup>1</sup> *Order: 1) Addressing Prudence; 2) Approving Application, in part; & 3) Ruling on Pending Requests*, filed November 22, 2010, pages 90-91, 95, 138-42 and Exhibit IV, pages 1-3 (November 22, 2010 Order, pp. 90-91, 95, 138-42 and Exh. IV, pp. 1-3).

<sup>2</sup> *Order Granting KCP&L's and CURB's Second Petitions for Reconsideration and Clarification*, issued February 21, 2011 (February 21, 2011 Order), ¶¶ 15, 18, 20. See *Order Nunc Pro Tunc Regarding February 21, 2011 Order Granting KCP&L's and CURB's Second Petitions for Reconsideration and Clarification*, issued March 3, 2011, ¶ 3 and Ordering Clause (A) (Commission clarifies that only the rate case expense portion of the revenue requirement for this docket is designated interim, non-final agency action subject to further proceedings).

<sup>3</sup> *Order Denying KCP&L's Petition for Reconsideration and Clarification of February 21, 2011 Order*, issued April 6, 2011 (April 6, 2011 Order), ¶¶ 18-19, 21-24.

<sup>4</sup> Tr. Vol. 15, p. 3374 (Weisensee). In this proceeding, KCP&L initially requested total rate case expense of \$9,070,515, Weisensee Direct, p. 2, but this was reduced to \$9,034,529 in rebuttal testimony due to billing errors identified by Staff Witness Baldry. Weisensee Rebuttal, p. 3. At the hearing, the amount was decreased further to \$9,033,136 based on additional errors found during discovery. Tr. Vol. 15, p. 3374 (Weisensee).



assessed to KCP&L pursuant to K.S.A. 66-1502; the remaining costs of \$7,610,304 are for KCP&L-only rate case expense.<sup>5</sup> In its November 22, 2010 Order, the Commission awarded KCP&L rate case expense of \$5,669,712 for this proceeding that included \$1,169,712 for CURB and Staff costs and \$4.5 million for KCP&L-only rate case expense.<sup>6</sup> KCP&L now requests an additional \$3,400,000 to reflect “the rate case expense actually incurred by the Company through November 30, 2010.”<sup>7</sup> The purpose of this follow-up proceeding is to reconsider and decide what rate case expense to include in the revenue requirement to be recovered from KCP&L’s ratepayers.<sup>8</sup>

3. Eight witnesses submitted prefiled testimony on the issue of rate case expense, as follows: KCP&L witnesses were John P. Weisensee,<sup>9</sup> Tim M. Rush,<sup>10</sup> and William H. Downey<sup>11</sup>; CURB witnesses were Ralph C. Smith,<sup>12</sup> Stacey Harden,<sup>13</sup> and Andrea C. Crane<sup>14</sup>; and Staff witnesses were William E. Baldry<sup>15</sup> and Jeffrey D. McClanahan.<sup>16</sup> All eight witnesses testified during the evidentiary hearing, with the Commission presiding, held on September 6 through 8, 2011.<sup>17</sup> Attorneys appearing at the evidentiary hearing were: Frank A. Caro, Jr., Luke A.

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<sup>5</sup> Weisensee Direct, p. 2. In a rate case, expenses incurred by the Commission, its staff, and CURB are assessed against the public utility. K.S.A. 66-1502. *Order Assessing Costs*, filed December 23, 2009.

<sup>6</sup> November 22, 2010, pp. 90-91, 95.

<sup>7</sup> Weisensee Direct, p. 2. The Company chose November 30, 2010, as the cut-off date for rate case expense to tie accounting records to the nearest month-end to the cut-off date for rate case expense set by the Commission at November 22, 2010, when the Order setting the revenue requirement for this case was filed. *February 21, 2011 Order*, ¶¶ 28-31; November 22, 2010 Order, p. 90, citing *Columbus Telephone Co. v. Kansas Corporation Comm’n*, 31 Kan. App. 2d 828, 835, 75 P.3d 257 (2003).

<sup>8</sup> February 21, 2011 Order, ¶ 3.

<sup>9</sup> Direct Testimony of John P. Weisensee, filed May 6, 2011 (Weisensee Direct); Rebuttal Testimony of John P. Weisensee, filed August 5, 2011 (Weisensee Rebuttal).

<sup>10</sup> Direct Testimony of Tim M. Rush, filed May 6, 2011 (Rush Direct); Rebuttal Testimony of Tim M. Rush, filed August 5, 2011 (Rush Rebuttal).

<sup>11</sup> Rebuttal Testimony of William H. Downey, filed August 5, 2011 (Downey Rebuttal).

<sup>12</sup> Direct Testimony of Ralph C. Smith, filed July 6, 2011 (Smith Direct).

<sup>13</sup> Direct Testimony of Stacey Harden, filed July 6, 2011 (Harden Direct).

<sup>14</sup> Direct Testimony of Andrea C. Crane, filed July 6, 2011 (Crane Direct).

<sup>15</sup> Direct Testimony of Jeffrey D. McClanahan, filed July 6, 2011 (McClanahan Direct).

<sup>16</sup> Direct Testimony of William E. Baldry, filed July 6, 2011 (Baldry Direct).

<sup>17</sup> In this Order, discussion of an evidentiary hearing refers to the September 6 through 8, 2011, evidentiary hearing on rate case expense. Any discussion of the evidentiary hearing in the underlying rate case, which was held August 16 to September 2, 2010, is referred to as the 2010 Evidentiary Hearing.

Hagedorn, Heather Humphrey, and Denise Buffington, on behalf of KCP&L; C. Steven Rarrick on behalf of CURB; and Patrick Smith on behalf of Staff and the public generally.<sup>18</sup> Hearing no objection to notice of the hearing, the Commission found notice was proper and jurisdiction existed over this proceeding at this time and place.<sup>19</sup>

4. The decision reflected in this Order is based upon the Commission's evaluation of all evidence presented on rate case expense and, as necessary, evidence presented earlier in this proceeding, including during the evidentiary hearing conducted before the Commission from August 16 through September 2, 2010. Thus, the record as a whole has been considered.<sup>20</sup> In reaching its decision, the Commission has evaluated numerous factors and has drawn from its expertise as the administrative agency delegated with the responsibility to regulate public utilities.<sup>21</sup> This Commission consists of three commissioners, all of whom are attorneys. In addition to reviewing the evidence presented, we have drawn from our individual and combined knowledge and experience to arrive at an amount of rate case expense that we find is prudent and is just and reasonable for KCP&L to recover from its ratepayers for this rate case.

5. As explained below, the Commission in this Order concludes that (1) KCP&L is allowed to recover the assessed rate case expense of \$1,422,832 for Staff and CURB; (2) KCP&L has not presented detailed, credible evidence to establish its management prudently incurred all rate case expense requested in this proceeding; and (3), based on the evidence in this proceeding, KCP&L is allowed to recover from its ratepayers \$4,500,000 in KCP&L-only rate case expense. The Commission is not persuaded that KCP&L has presented sufficient evidence to justify increasing the award of KCP&L-only rate case expense above what the Commission originally approved in its November 22, 2010 Order. Therefore, KCP&L will recover total rate case expense of \$5,922,832 as part of its revenue requirement. KCP&L has had rates recovering the

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<sup>18</sup> Transcript of Proceedings, September 6, 2011, Volume 15, page 3334 (Tr. Vol. 15, p. 3334).

<sup>19</sup> Tr. Vol. 15, p. 3335.

<sup>20</sup> K.S.A. 2010 Supp. 77-621(c)(7) and (d).

<sup>21</sup> K.S.A. 66-101, 66-101b, 2010 Supp. 66-104.

four-year amortization of \$5,669,712<sup>22</sup> based on the November 22, 2010 Order.<sup>23</sup> To recover the additional \$253,120 awarded, KCP&L shall amortize this additional amount over three years.

### I. Background

6. This proceeding was KCP&L's fourth and final rate case in the series of rate cases contemplated in KCP&L's Resource Plan adopted in the Stipulation and Agreement approved in Docket 04-1025 (04-1025 S&A) on December 17, 2009, as reflected in the following Chart of KCP&L rate case proceedings under its Resource Plan:

**Chart of KCP&L Resource Plan Proceedings:**

<u>Docket No.</u>	<u>Caption</u>	<u>Filed</u>	<u>Hearing</u>	<u>Order</u>
04-KCPE-1025-GIE	<i>In the Matter of the Future Supply Delivery and Pricing of the Electric Service Provided by Kansas City Power and Light Company.</i>	5-18-04	6-17-05	8-5-05
06-KCPE-828-RTS	<i>In the Matter of the Application of Kansas City Power &amp; Light Company to Modify its Tariffs to Continue the Implementation of its Regulatory Plan</i>	1-31-06	10-5-06	12-4-06
07-KCPE-905-RTS	<i>In the Matter of the Application of Kansas City Power &amp; Light Company to Modify its Tariffs to Continue the Implementation of its Regulatory Plan</i>	3-1-07	9-10-07	11-20-07
09-KCPE-246-RTS	<i>In the Matter of the Application of Kansas City Power &amp; Light Company to Modify its Tariffs to Continue the Implementation of its Regulatory Plan.</i>	9-5-08	6-22-09	7-24-09
10-KCPE-415-RTS	<i>In the Matter of the Application of Kansas City Power &amp; Light Company to Modify its Tariffs to Continue the Implementation of its Regulatory Plan.</i>	10-17-09	8-16 to 9-2-10 9-6 to 9-8-11	11-22-10 Pending
11-KCPE-581-PRE	<i>In the Matter of the Petition of Kansas City Power &amp; Light Company (KCP&amp;L) for Determination of the Ratemaking Principles and Treatment That Will Apply to the Recovery in Rates of the Cost to be Incurred by KCP&amp;L for Certain Electric Generation Facilities Under K.S.A. 66-1239.</i>	2-23-11	7-11 to 7-15-11	8-19-11

<sup>22</sup> November 22, 2010 Order, pp. 95.

<sup>23</sup> November 22, 2010 Order, p. 83-95.

7. Following a 14-day evidentiary hearing in this rate case, conducted from August 16 through September 2, 2010 (referred to in this Order as the 2010 Evidentiary Hearing), the Commission issued an Order on November 22, 2010, that addressed prudence related to KCP&L's remaining investment in Iatan common plant, environmental upgrades to Iatan Unit 1, and construction of Iatan 2 and that also ruled on numerous other traditional rate case issues.<sup>24</sup> The Commission was asked to decide an amount of rate case expense to include in the revenue requirement, but it found this very difficult due to statutory time constraints for issuing an Order and lack of evidence to support KCP&L's requested amount of \$8,319,363. The request included assessed rate case expense for Staff and CURB of \$1,169,712 and the balance for KCP&L-only costs of \$7.1 million (approximately \$5 million for lawyers and legal fees plus expenses, \$2 million for non-lawyer consultants, and \$117,000 for expenses such as photocopies, hotels, etc.).<sup>25</sup> The Commission found the amount requested for KCP&L-only legal services of more than \$5 million was excessive, even taking into account the complex issues addressed in this rate case.<sup>26</sup> After discussing numerous factors considered in reviewing the evidence on rate case expense, the Commission concluded \$4,500,000 was an appropriate amount of rate case expense for KCP&L-only costs to be recovered from ratepayers. The Commission also approved the assessed rate case expense of \$1,169,712 for Staff and CURB and allowed total rate case expense of \$5,669,712 to be included in KCP&L's revenue requirement.<sup>27</sup> In reaching this decision, the Commission held the amount of rate case expense established in its Order would be treated as Interim Rate Relief. In doing so, the Commission recognized that this amount was prudent, just, and reasonable, and that setting the amount cut off conjecture about future costs not known and measurable. But it recognized the decision was subject to challenge.<sup>28</sup>

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<sup>24</sup> November 22, 2010 Order, pp. 4-6.

<sup>25</sup> November 22, 2010 Order, p. 90.

<sup>26</sup> November 22, 2010 Order, p. 92.

<sup>27</sup> November 22, 2010 Order, pp. 86-95.

<sup>28</sup> November 22, 2010 Order, p. 90.

8. Both KCP&L and CURB challenged the rate case expense decision in their respective Petitions for Reconsideration. In ruling on these Petitions, the Commission rejected KCP&L's assertion that the Company was entitled to recover all rate case expense shown to be prudent and pointed to its statement in the November 22, 2010 Order "that rate case expense must be prudently incurred by the Company and must also be fair and reasonable for them to be borne by ratepayers. Thus, merely showing prudent expenditures is not enough."<sup>29</sup> Because the record did not contain sufficient evidence to establish a specific amount for rate case expense, the Commission exercised its judgment to determine an amount of prudently incurred rate case expense that it considered appropriate to be borne by KCP&L ratepayers.<sup>30</sup> The Commission reaffirmed its decision that KCP&L-only rate case expense of \$4,500,000 was prudently incurred and was just and reasonable to recover from ratepayers. The Commission then held that this amount of rate case expense would no longer be considered Interim Rate Relief and denied KCP&L's request to create a separate account to record these expenses.<sup>31</sup> The Commission also addressed CURB's issues on rate case expense.<sup>32</sup> Having concluded the amount of \$4,500,000 approved in its November 22, 2010 Order for KCP&L-only rate case expense should not be treated as interim relief, the Commission held the total amount of rate case expense appropriate for KCP&L to recover from its ratepayers as part of the revenue requirement was \$5,669,712.<sup>33</sup>

9. Once again, both KCP&L and Westar challenged the Commission's decision on rate case expense in Petitions for Reconsideration. Both criticized the Commission for deciding rate case expense while recognizing the record lacked details on this issue. Also, both KCP&L and CURB pointed out that they recommended the Commission address rate case expense as part of an abbreviated, follow-up rate case proceeding under K.A.R. 82-1-231(b)(3), which the

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<sup>29</sup> *Order on Petitions for Reconsideration and Clarification and Order Nunc Pro Tunc*, issued January 6, 2011 Order, page 75 (January 6, 2011 Order, p. 75)(footnote omitted), *citing* November 22, 2010 Order, p. 88.

<sup>30</sup> January 6, 2011 Order, ¶¶ 74-76.

<sup>31</sup> January 6, 2011 Order, ¶ 77.

<sup>32</sup> January 6, 2011 Order, ¶¶ 78-83.

<sup>33</sup> January 6, 2011 Order, ¶¶ 84-85.

Commission denied, and that resulted in an inadequate record on this issue.<sup>34</sup> After reviewing their Petitions, the Commission agreed the issue of rate case expense should be examined further and granted reconsideration in its February 21, 2011 Order, noting the award could be more or less than the rate case expense decided in the November 22, 2010 Order.<sup>35</sup> The Commission (1) limited participation in this reconsideration proceeding to KCP&L, CURB and Staff, (2) opened the administrative record to receive new evidence on the issue of rate case expense, (3) ordered that KCP&L and CURB could conduct discovery and file appropriate evidence on this issue, (4) directed an evidentiary hearing be scheduled, and (5) appointed a new prehearing officer to address this issue.<sup>36</sup>

10. KCP&L filed a final Petition for Reconsideration, arguing the Commission erred in cutting off recovery for rate case expense at November 22, 2010, because the Company would have to bear expenses incurred after that date. The Commission disagreed with KCP&L's argument and denied reconsideration. The Commission explained that it set the cut-off date to coincide with the November 22, 2010 Order following this agency's long-standing practice of recognizing an end-date for inclusion of rate case expense with the order that established the utility's revenue requirement.<sup>37</sup> The Commission further noted that its decision to cut off rate case expense on November 22, 2010, took into account the large amount of rate case expense that ratepayers have already been required to pay for KCP&L's series of rate cases arising from its Resource Plan approved in Docket 04-1025. This amount included an additional \$2.3 million rate case expense for KCP&L's last rate case in Docket 09-KCPE-246-RTS (09-246) that the Commission granted in the November 22, 2010 Order.<sup>38</sup> We note rate case expense for the two prior rate cases under the Resource Plan included \$1,196,430 for Docket 06-KCPE-828-RTS and \$457,582 for Docket 07-KCPE-905-RTS. Thus, KCP&L has already been approved to receive

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<sup>34</sup> November 22, 2010 Order, pp. 135-37.

<sup>35</sup> February 21, 11 Order, ¶ 8 ("Based on this review, the Commission may decide to grant a smaller or larger amount for rate case expense for this proceeding than decided in its November 22, 2010 Order.").

<sup>36</sup> February 21, 2011 Order, ¶ 3.

<sup>37</sup> April 6, 2011 Order, ¶¶ 17-24.

<sup>38</sup> April 6, 2011 Order, ¶ 18, *citing* November 22, 2010 Order, p. 88.

more than \$3.9 million in rate case expense for implementing its Resource Plan. The Commission has also pointed out that KCP&L proposed a never-ending process by which an outside attorney files a pleading addressing rate case expense and, in doing so, incurs additional rate case expense that KCP&L will seek to recover through additional rate case expense or as a regulatory asset. The Commission rejected KCP&L's proposal, noting that other utilities have not requested rate case expense for proceedings in a rate case that followed the Commission Order setting the Company's revenue requirement.<sup>39</sup> The remaining issue to decide here is the amount of rate case expense KCP&L will recover from its ratepayers for this rate case proceeding.

## **II. Procedural Rulings During the Evidentiary Hearing**

11. During the evidentiary hearing, KCP&L Exhibits 4 and 5 were offered into evidence but a decision of whether to admit them was taken under advisement.<sup>40</sup> KCP&L Exhibit 4 is a chart showing a list of issues with corresponding KCP&L witnesses and attorneys; the date of the document is identified as "11/17/2009 Draft." KCP&L Exhibit 5 is an undated Rebuttal Issues List showing Staff and CURB witnesses, KCP&L witnesses, KCP&L attorneys, and KCP&L regulatory people. Both Exhibits were identified by KCP&L Witness Rush, on redirect examination, as documenting the company's efforts to control, supervise, and monitor the work by the numerous outside attorneys and consultants involved in this proceeding.<sup>41</sup> Staff and CURB objected to admission of these documents and urged the Commission to reject them because neither document was disclosed in response to discovery requests propounded on the subject of assignment of issues.

12. The Commission rejects KCP&L's explanation that it did not disclose these exhibits in response to data requests because the questions did not specifically ask for documents or because KCP&L did not understand until the hearing that provision of sufficient detail was an issue in this proceeding. The Commission is concerned that, in not disclosing these exhibits during discovery, KCP&L was involved in a gamesmanship not appropriate to regulatory proceedings. Utilities

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<sup>39</sup> April 6, 2011 Order, ¶ 23, and n. 56.

<sup>40</sup> Tr. Vol. 16, pp. 3848, 3859.

<sup>41</sup> Tr. Vol. 16, pp. 3837-48 (Exh. 4) and 3848-54 (Exh. 5).

control the documents needed to decide issues in a rate case and are obliged under K.A.R. 82-1-231(a) to provide all relevant facts and data pertaining to its business and operations to assist in deciding the issues. Furthermore, information reflected in these exhibits likely would have been helpful when sorting through the hundreds of pages of invoices and billings received from KCP&L. Nonetheless, the Commission concludes KCP&L Exhibits 4 and 5 are relevant to the issue of rate case expense and, therefore, are admitted and are given appropriate weight and consideration by the Commission in its deliberations. The Commission concludes that KCP&L Exhibits 4 and 5 provide minimal evidence to support KCP&L's claim that the Company adopted a detailed process to monitor activities and expenses incurred by outside attorneys and consultants.

13. The Commission also took admission of KCP&L Exhibit 8, titled "2010 Regulatory Strategy Team (RST) Charter," under advisement.<sup>42</sup> Again, Staff and CURB objected to introducing this exhibit during redirect of KCP&L Witness Rush rather than disclosing it during discovery. The Commission finds KCP&L Exhibit 8 relevant and admits it as part of the record and has given this document the appropriate weight and consideration in the Commission's deliberations.

14. KCP&L Exhibit 2 is a compact disc (CD) that KCP&L argued contains work papers that support testimony of KCP&L Witnesses Weisensee and Rush; the CD was provided to Staff and CURB at the time direct testimony was filed by these witnesses on May 6, 2011. Staff and CURB objected to admission of KCP&L Exhibit 2 because this CD contains invoices and bills from vendors and timekeepers that KCP&L relied upon to support its rate case increase request. Staff and CURB argued contents of this CD should have been offered as part of prefiled testimony of these witnesses when filed, not provided to Staff and to CURB separately as if they merely contained work papers that are usually filed separate from testimony.<sup>43</sup> Both Staff and CURB have had access to KCP&L Exhibit 2 from the time KCP&L filed its direct testimony on

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<sup>42</sup> Tr. Vol. 16, pp. 3854-59.

<sup>43</sup> Tr. Vol. 16, pp. 3866-72.



the rate case expense issue. The Commission finds the information on KCP&L Exhibit 2 is relevant and admits it into the record. The Commission further finds that, because Staff and CURB had access to this information from the time direct testimony was filed by Weisensee and Rush, Staff and CURB were not prejudiced by admission of KCP&L Exhibit 2 into this record.<sup>44</sup>

15. Finally, the Commission may take official notice of matters that could be judicially noticed in Kansas courts, the record of other proceedings before the Commission, and technical or scientific matters within the Commission's specialized knowledge.<sup>45</sup> The Commission takes Administrative Notice of the following item from a prior Commission docket that was previously cited in the November 22, 2010 and February 21, 2011 Orders<sup>46</sup>:

- a. In the Matter of an Audit and General Rate Investigation of Rural Telephone Company, Docket No. 01-083, *Order Regarding Rate Design*, filed November 16, 2001.

### **III. Factors Considered in Determining Rate Case Expense**

16. The Commission has a long-standing policy of including fair and reasonable rate case expenses that are prudently incurred by a company in a rate case in costs to be borne by ratepayers.<sup>47</sup> Historically in Kansas the general rule has been to consider prudently incurred rate case expense among the reasonably necessary expenses a public utility is entitled to recover as part of its revenue requirement in a rate case.<sup>48</sup> As with any expense recovered in revenue requirement, the utility has the burden to establish by substantial evidence in the record that the expense is known and measurable<sup>49</sup> and is prudent and reasonable.<sup>50</sup> Substantial evidence must

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<sup>44</sup> Although this Order has been designated as setting precedent under 2011 House Bill No. 2027, amending K.S.A. 2010 Supp. 77-415, our rulings on admission of evidence, namely Exhibits 2, 4, 5, and 8, are specific to the facts before us and do not create precedent for subsequent proceedings.

<sup>45</sup> K.S.A. 77-524(f); K.S.A. 60-409; K.A.R. 82-1-230(h).

<sup>46</sup> Tr. Vol. 16, pp. 3918-22.

<sup>47</sup> *In the Matter of the Application of Westar Energy, Inc.*, Docket No. 05-WSEE-981-RTS, Order on Reconsideration, issued February 13, 2006, ¶ 93. See *Driscoll v. Edison Light & Power Co.*, 307 U.S. 104, 120-21 (1939) ("[T]he utility should be allowed its fair and proper expenses for presenting its side to the commission.").

<sup>48</sup> *Home Telephone Co. v. Kansas Corporation Comm'n*, 31 Kan. App. 2d 1002, 1015, 76 P.3d 1071 (2003). See November 22, 2010 Order, pp. 87-88;

<sup>49</sup> 31 Kan. App. 2d at 1015.

<sup>50</sup> *Kansas Industrial Consumers v. Kansas Corporation Comm'n*, 36 Kan. App. 2d 83, 111, 138 P.3d 338 (2006). See November 22, 2010 Order, pp. 87-88; January 6, 2011 Order, ¶ 75; Feb. 21, 2011 Order, ¶ 13.

be both relevant and have substance that “furnishes a substantial basis of fact from which issues can reasonably be resolved.”<sup>51</sup> The underlying purpose of this entire proceeding has been to establish “just and reasonable” rates.<sup>52</sup> The Commission’s goal in a rate case is to determine a rate that is within the “zone of reasonableness.”<sup>53</sup>

17. In determining whether prudently incurred rate case expense should be considered reasonable and included in revenue requirement recovered from ratepayers, the Commission must weigh and balance competing policies. The Kansas Supreme Court has observed that in setting utility rates, the Commission must consider and balance interests of the following parties: (1) The utility’s investors vs. the ratepayers; (2) the present ratepayers vs. the future ratepayers; and (3) the public interest.<sup>54</sup> This balancing of competing interests is an integral part of the review conducted by the Commission to determine reasonableness.

18. When the Commission is called upon to determine the reasonableness of time billed and labor expended in litigating a case, the utility holds the information needed to support its request. The utility has the burden to prove that the hours billed are reasonable “by submitting meticulous, contemporaneous time records that reveal, for each lawyer for whom fees are sought, all hours for which compensation is requested and how those hours were allotted to specific tasks.”<sup>55</sup> KCP&L has recognized that the Commission is considered an expert in making a

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<sup>51</sup> *Home Telephone*, 31 Kan. App. 2d at 1078-79.

<sup>52</sup> K.S.A. 66-101b; K.S.A. 66-101f.

<sup>53</sup> *Kansas Gas & Electric, v. Kansas Corporation Comm’n*, 239 Kan. 483, 488-89, 500-01 (1986), vacated in part by *Kansas Gas and Electric Co. v. Kansas Corporation Comm’n*, 48 U.S. 1044 (1987). See, *Power Comm’n v. Hope Gas Co.*, 320 U.S. 591 (1944); *In re Permian Basin Area Rate Cases*, 390 U.S. 747,770 (1968).

<sup>54</sup> *Kansas Gas & Electric*, 239 Kan. at 488..

<sup>55</sup> *Case v. Unified Sch. Dist. No. 233*, 157 F.3d 1243, 1250 (10<sup>th</sup> Cir. 1998). See *Kansas Industrial Consumers v. Kansas Corporation Comm’n*, 36 Kan. App. 2d 83, 111-12, 138 P.3d 338 (2006) (the reviewing court will determine if substantial evidence in the record supports an agency’s findings of appropriate attorney fees). February 21, 2011 Order, ¶¶ 21-22 and notes 36-38; November 22, 2010 Order, pp. 88-89.

decision on rate case expense and draws from its knowledge and experience in evaluating the value of services rendered in this proceeding.<sup>56</sup>

19. The Commission has considered a wide range of factors in arriving at an appropriate rate case expense for this docket. Because this issue is being reviewed on reconsideration, the Commission is not faced with the statutory, 240-day deadline of K.S.A. 66-117, which restricted review of rate case expense in the regular rate case proceeding. In issuing its November 22, 2010 Order, the Commission noted the record did not contain detailed information on rate case expense.<sup>57</sup> In its January 6, 2011 Order, the Commission granted reconsideration of rate case expense and ordered further proceedings to allow KCP&L and CURB to be heard on this issue, including presenting additional evidence to support their claims on rate case expense.<sup>58</sup> We note that KCP&L has continued to argue that the Commission should have allowed it to recover all its requested rate case expense based on it providing actual expenses to Staff at the end of the limited timeline for issuing an Order in the rate case.<sup>59</sup> But KCP&L's evidence to support its request, including responses to Staff Data Requests (DRs) 554 and 555 (which responses were submitted on a compact disc that is extremely difficult to decipher), was based on estimates and did not provide detailed evidence to support the request. Granting reconsideration here has allowed KCP&L the opportunity to file whatever evidence it wanted to support its request for rate case expense, resulting in a voluminous record on this issue. Thus, the Commission has not retroactively required a different process than previously used but instead has given KCP&L additional time and opportunity to submit evidence that should have been provided all along under the accepted practice to support a request for rate case expense in this proceeding.

20. Parties were given guidance during this proceeding about what evidence should be presented and how. During the prehearing conference on March 3, 2011, Prehearing Officer

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<sup>56</sup> KCP&L Pre-hearing Brief, filed August 15, 2011, ¶ 5; February 21, 2011 Order, ¶ 23, citing *Snider v. American Family Mut. Ins. Co.*, 45 Kan. App. 2d 196, 244 P.3d 1285 (2011); *Johnson v. Westhoff Sand Co.*, 281 Kan. 930, 940, 135 P.3d 1127 (2006); *Westar Energy v. Wittig*, 44 Kan. App. 2d 206 (2010).

<sup>57</sup> November 22, 2010 Order, pp. 88-89.

<sup>58</sup> February 21, 2011 Order, ¶¶ 15, 26.

<sup>59</sup> KCP&L Post Hearing Brief, ¶ 22-23.

Coffman discussed the detail of information the Commission wanted, summarizing three different levels of information. First, the Commission wanted a general overview listing all vendors, the total amount of rate case expense requested for each vendor and a brief description of what issue or work was done by each vendor. Second, KCP&L was to provide a summary for each vendor listing each timekeeper working for the vendor and state the overall amount being requested for each timekeeper with a brief description of the nature of the work that timekeeper performed. Third, detailed information was to be provided for each timekeeper that included the hourly rate, number of hours worked, dates these hours were worked, and a description of work performed on those dates. Billing statements for attorneys were to comply with Rule 1.5 of the Kansas Rules of Professional Conduct and any amount for a vendor included in capital costs or capitalized in project costs was to be explained. KCP&L was further expected to clarify any allocation of rate case expense between jurisdictions.<sup>60</sup> The Commission confirmed its desire to receive information providing detail as described by Prehearing Officer Coffman during the Prehearing Conference.<sup>61</sup>

21. Yet the Commission finds the evidence submitted in this proceeding still lacked detail desired to calculate rate case expense. For example, the description of work performed given by timekeepers was almost always set out as block descriptions per day rather than breaking out time spent on specific issues; this rendered impossible any meaningful comparison of work to identify duplication of effort on issues. This lack of detail made it impossible to rationally analyze billings submitted by multiple attorneys from several different law firms. For some consultants, essentially no description was made that could be used to decipher what issues were being addressed by individual timekeepers. The lack of detail in descriptions made it impossible to determine whether the claimed work was actually performed in a competent manner and useful in the rate case, whether the company was prudent in incurring costs for each attorney or consultant,

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<sup>60</sup> Transcript of Prehearing Conference, March 9, 2011 (March 9, 2011 Prehe. Tr.), pp. 7-10. *Prehearing Officer's Report and Recommendation Following Prehearing Conference on March 9, 2011*, filed April 19, 2011, ¶ 4.

<sup>61</sup> *Order Addressing Prehearing Officer's Report and Recommendation Following Prehearing Conference on March 9, 2011*, issued June 24, 2011, ¶¶ 7, 20.

and whether it is just and reasonable to pass these costs through to ratepayers as rate case expense.

22. KCP&L has argued that the Commission is setting a new policy for deciding rate case expense in this docket, but the Commission has already addressed and rejected that argument.<sup>62</sup> While the Commission and its Prehearing Officer have articulated directives to give guidance to KCP&L about the information needed, the Commission has previously stated its reasons for requiring a utility to provide actual and detailed documentation of expenses incurred, rather than relying on estimates,<sup>63</sup> as follows:

Attorney fees included as a rate case expense to be passed onto regulated ratepayers must be reasonable. Rule 1.5 of the Kansas Rules of Professional Conduct sets out eight factors this Commission should consider in determining whether attorney fees are reasonable. In making its decision, the Commission should draw from its knowledge and expertise in evaluating the value of services provided by the attorneys and exercise its sound discretion in determining reasonable attorney fees. The Commission may reduce an attorney fee award if the recording of tasks worked on is insufficient, if multiple attorneys duplicate their effort, when time is expended on activities unrelated to issues or litigation, and for time spent on travel.

This Commission has allowed recovery of reasonable attorney fees as part of rate case expense. In this docket, the attorney fees submitted for inclusion as a rate case expense have several problems. No effort has been made to provide an itemized statement of the nature of the activity or services performed by any of the attorneys. This prevents the Commission from considering the nature of the legal services provided and from examining the hours submitted to review for duplication of efforts by multiple attorneys, time expended on legal services unrelated to the pending docket, and nonproductive travel time. The Commission

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<sup>62</sup> February 21, 2011 Order, ¶¶ 11-13, *citing* November 22, 2010, pp. 88-89 (Evidence on rate case expense should reflect “the time and amount of services rendered, the general nature and character of the services revealed by invoices, whether attorneys or consultants presented testimony or other tangible work product that was made a part of the record, the nature and importance of the litigation, and the degree of professional ability, skill, and experience called for and used during the course of the proceeding.”) (citations omitted); January 6, 2011 Order, ¶¶ 73-74.

<sup>63</sup> *In the Matter of an Audit and General Rate Investigation of Rural Telephone Company*, KCC Docket 01-RRLT-083-AUD, Order Setting Rate Case Expense, issued November 16, 2001 (Rural Telephone November 2001 Order), ¶¶ 27-32.

also needs to be able to review the billings to assure Kansas ratepayers are not paying high legal rates for services of a non-legal nature. The company and law firm need to be aware that in the future the Commission will not approve attorney fees that do not contain an itemized statement of the nature of the activity or services performed, the amount of time expended for each activity or service, and the identity of the attorney or other personnel that performed each activity or service. The detailed itemization expected by the Commission is standard for most law firms and is provided in corporate billings by public utilities that seek to pass the expense to ratepayers.

Also, the Commission is concerned that the hourly rate for attorney services that [the Company] has asked this Commission to pass onto [its] ratepayers is 30 percent higher than the hourly rate for services provided by extremely experienced regulatory attorneys that have been submitted by other companies in recent rate case dockets conducted before this Commission. The Commission notes that it is concerned about the appropriate amount of attorneys fees that should be passed on in regulated rates to Kansas customers, not how much [the Company] agrees to pay its attorneys for legal consultation about unregulated affairs. This issue will be reviewed closely in future dockets.<sup>64</sup>

23. This quote makes clear the Commission is following a consistent policy requiring detailed documentation of actual expenses incurred, not merely estimates, to establish rate case expense. Before beginning a more granular analysis of KCP&L's request for rate case expense, we note the record before us reflects a remarkable number of timekeepers and billings. Included with this Order as Attachment A is a summary of the hours billed and amounts requested for each firm and individual timekeeper. In this case, six law firms with 47 timekeepers (lawyers, consultants and paralegals) billed more than 16,000 hours toward this case. In addition to the law firms, eight outside consulting firms with a total of 46 individual timekeepers billed more than 9,700 hours. Thus, the total work effort of outside attorneys and consultants on behalf of KCP&L involved 90 individual timekeepers billing more than 25,000 hours of legal and professional services to the litigation portion of this regulatory proceeding. These numbers shock the conscience of the Commission.

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<sup>64</sup> Rural Telephone November 2001 Order, ¶¶ 28-30 (citations omitted). Tr. Vol. 17, pp. 3918-20 (Loyd).

#### IV. Determining Prudent and Just and Reasonable Attorney Fees

24. The largest portion of KCP&L's rate case expense is for legal fees and expenses. Lack of detail has made it difficult for the Commission to perform a "lodestar calculation" used to set reasonable attorney fees; using this method, reasonable attorney fees are determined by multiplying a reasonable number of hours worked by a reasonable hourly rate to arrive at the "lodestar amount" that is adjusted further to account for the eight factors set out in Rule 1.5 of the Kansas Rules of Professional Conduct.<sup>65</sup> The eight factors listed in Rule 1.5 to provide guidance in calculating reasonable attorney fees are as follows:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.<sup>66</sup>

25. The Commission notes that, with regard to Rule 1.5(8), none of the agreements for attorney fees were contingent upon the outcome of this proceeding; instead, fixed hourly rates were set for outside law firms, but these rates consistently increased during the course of this proceeding for every attorney whose billings were reviewed. The Commission has been offered no reasonable explanation for why, in the midst of the country's worst recession when most businesses are reducing prices to attract customers, every attorney's hourly rate increased during

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<sup>65</sup> *Sheldon v. Vermonty*, 237 F. Supp. 2d 1270, 1274 (D. Kan. 2002).

<sup>66</sup> November 22, 2010 Order, p. 89, n. 340.

the pendency of this proceeding. The Commission further notes that, with regard to Rule 1.5(7), all lawyers involved in this proceeding have a good reputation and appear to be capable attorneys. Attorneys Cafer, Caro, Callenbach, and Steiner, who appeared at the 2010 Evidentiary Hearing on behalf of KCP&L, are experienced and known to the Commission. Other timekeepers believed to be attorneys<sup>67</sup> are not known to the Commission and, based on their respective hourly rate, some appear to be much less experienced.<sup>68</sup> The remaining factors have been considered in conducting the lodestar calculation discussed in this Order.

26. In updating its actual rate case expense through November 30, 2010, to \$9,033,136,<sup>69</sup> KCP&L argued that the Commission must take into account that “rate case expenditures involve some degree of management choice and discretion whether to incur the expenses.”<sup>70</sup> The Commission is aware of the respect it must accord management decisions in reviewing whether decisions made incurring rate case expense in this docket were prudent. In analyzing this issue, the Commission evaluates such management choice and discretion as bounded by “prudence” defined as “carefulness, precaution, attentiveness and good judgment.”<sup>71</sup> In other words, the Commission will not pass through to rates the costs arising from imprudent management choices and discretion because utilities have no right to recover their costs simply because they have incurred them. Rates that may include imprudent or excessive rate case expense costs would be an unjust or unreasonable rate, charge or extraction, and thus prohibited and void.<sup>72</sup> Following is a discussion of factors we considered in evaluating the evidence as a whole to reach a decision on rate case expense.

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<sup>67</sup> *Infra*, ¶¶ 51-52.

<sup>68</sup> Schedules JPW2010-14 (Polsinelli Shughart Level 2 Summary) and JPW2010-15 (Schiff Hardin Level 2 Summary).

<sup>69</sup> Tr. Vol. 15, p. 3374 (Weisensee). See Weisensee Rebuttal, p. 3; Weisensee Direct, p. 2.

<sup>70</sup> KCP&L Prehearing Brief, ¶ 6, *quoting* 31 Kan. App. 2d 1015, *citing Columbus Telephone Co. v. Kansas Corporation Comm’n*, 31 Kan. App. 2d 828 (2003).

<sup>71</sup> Black’s Law Dictionary 1104 (WEST 5<sup>th</sup> Ed. 1979). See November 22, 2010 Order, p. 13.

<sup>72</sup> K.S.A. 66-101b.



### A. The American Rule

27. The Commission begins its analysis of attorney fees by noting that the custom and practice of recovering legal expenses in utility cases differs markedly from the general practices of civil and criminal litigation. Under the “American Rule” of civil litigation, parties bear their own attorney fees and costs of litigating a case, unless a contractual or statutory requirement changes this policy.<sup>73</sup> The American Rule is well established in Kansas courts, which reflects that generally litigants in this state are expected to bear their own attorney fees.<sup>74</sup> Intervenors in regulated proceedings in Kansas generally must bear their own legal expenses for participating in the proceeding and appearing before the Commission. Several intervenors in this docket have paid their own attorney fees, including entities such as the Hospital Intervenors and Shawnee Unified School District No. 512.<sup>75</sup> In Kansas by statute, expenses for the Commission and its Staff and for CURB are assessed against the utility filing a rate case.<sup>76</sup> Also, the Kansas Supreme Court has set out guidelines for district courts to consider in determining reasonable attorney fees.<sup>77</sup> In reviewing these guidelines in the context of awarding attorneys fees from a common fund in a class action, the Court noted that the amount of recovery reflected using a lodestar calculation can act as a ceiling on the amount of attorney fees awarded from the common fund.<sup>78</sup>

28. If the American Rule were applied here, KCP&L would be responsible for paying its own expenses and costs, would not recover any rate case expense from ratepayers, and would be required to pay the assessed expenses under K.S.A. 66-1502 for expenses of the Commission, its

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<sup>73</sup> *Robinson v. City of Wichita Employees' Retirement Bd. of Trustees*, 291 Kan. 266, 279, 241 P.3d 15, 24 (2010). In contrast, under the “English Rule” the losing party pays the prevailing party’s attorney fees. BLACK’S LAW DICTIONARY, (WEST 8<sup>th</sup> Ed, 2004), p. 570.

<sup>74</sup> 291 Kan. at 279, *citing* 8 Larson Workers’ Compensation Law § 133.01 (“The obligation to bear one’s own legal fees, then, has become established as a necessary evil, which each client must contrive to bear as cheerfully as he or she can.”).

<sup>75</sup> November 22, 2010 Order, pp. 2-3.

<sup>76</sup> K.S.A. 66-1502.

<sup>77</sup> *Shutts v. Phillips Petroleum Co.*, 235 Kan. 195, 679 P.2d 1159 (1984) *aff’d in part, rev’d in part*, 472 U.S. 797 (1985).

<sup>78</sup> *Gigot v. Cities Service Oil Co.*, 241 Kan. 304, 315-19, 737 P.2d 13, 26-28 (1987) (Kansas Supreme Court outlines different approaches for calculating fair and reasonable attorney fees from a common fund in class action suits, including a percentage of the award, weighing and evaluating a number of factors, the lodestar approach, or a combination adjusted for subjective considerations by the court).

Staff and CURB of \$1,422,832. But historically Kansas utilities have been allowed recovery of prudently incurred rate case expense that is just and reasonable as one of the many components making up revenue requirement.<sup>79</sup> Therefore, while recognizing KCP&L would recover no rate case expense under the American Rule, the Commission continues to review the amount to be awarded in this proceeding.

### **B. Percentage of the Award**

29. A factor considered in evaluating whether the requested rate case expense is just and reasonable compares similar cases and the size of the rate case expense award in the context of the overall revenue requirement for the utility. KCP&L invited this comparison with the “Wolf Creek” docket,<sup>80</sup> where utility-owners of the Wolf Creek Nuclear Generating Station sought to include rate case expense in the revenue requirement for that facility to be assessed against ratepayers. KCP&L argued that this case had been compared to the Wolf Creek docket during these proceedings<sup>81</sup> and that, in the Wolf Creek docket, rate case expense was initially estimated to be \$2,078,500, but the actual rate case expense incurred was \$4,719,214, which is more than double the initial estimate. Despite this variance from the initial estimate, the Commission allowed the utility to recover the full amount of its rate case expense from customers.<sup>82</sup> Here, KCP&L argued that the Commission, as it did in the Wolf Creek docket, should allow KCP&L’s requested rate case expense as a reasonable amount to recover from customers even though it exceeds the original estimate of \$2.1 million by over \$5 million.<sup>83</sup>

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<sup>79</sup> *Columbus Telephone Co. v. Kansas Corporation Comm’n*, 31 Kan. App. 2d 828, 835, 75 P.3d 257, 262 (2003).

<sup>80</sup> *Kansas Gas & Elec. Co.*, Consolidated Docket No. 84-KG&E-197-RTS & Docket No. 120,924-U, Order issued Sept. 27, 1985 (Wolf Creek Order).

<sup>81</sup> KCP&L Posthearing Brief, ¶¶ 20-21.

<sup>82</sup> KCP&L Posthearing Brief, ¶ 21, *citing* Wolf Creek Order, pp. 115-16. Although the Wolf Creek Order does not specify, the rate case expense awarded appears to include the assessment of costs for the Commission and its Staff. The Commission notes that CURB had not been created at that time. K.S.A. 66-1222.

<sup>83</sup> KCP&L Posthearing Brief, ¶ 21.

30. We believe it helpful to consider the size of the Wolf Case docket. Parties involved included three utilities (KG&E, KCP&L, and Kansas Electric Power Cooperative), Commission Staff, and numerous intervenors such as the Kansas Attorney General, two public interest associations (Alliance for Liveable Electric Rates and Electric Shock Coalition), the Kansas Independent Oil and Gas Association, a coalition of 12 large industrial customers, a coalition of 10 local government entities, a coalition of 8 municipalities, and several other entities. Public hearings were held in 19 different venues with public testimony given by more than 100 members of the public, hundreds of written public comments were received, and more than 90 witnesses testified during a contentious and complex evidentiary hearing.<sup>84</sup> In spite of KCP&L's urging that the two dockets are comparable, the Commission concludes the instant proceeding did not approach the complexity of the Wolf Creek docket involving a nuclear power plant.

31. Regarding KCP&L's reliance on the Wolf Creek Order to support awarding rate case expense exceeding an initial estimate, the Commission points out that the amount of rate case expense awarded in its November 22, 2010 Order was \$5.6 million, or a little more than twice the \$2.1 that KCP&L initially estimated here. By comparison, the Wolf Creek Order awarded \$4.7 million in rate case expense, also a little more than twice the estimated rate case expense there of \$2.0 million. These awards appear comparable. KCP&L has not explained, through argument or evidence, why it should receive an even more generous award of rate case expense over its original estimate (\$9 million vs. \$2.1 million) than the amount allowed in the Wolf Creek docket compared with the original estimate there (\$4.7 million v. \$2 million).

32. In evaluating whether the requested rate case expense is just and reasonable, the Commission also finds it helpful to compare the rate case expense allowed to be recovered from ratepayers with the overall revenue requirement awarded the utility. In the Wolf Creek docket, the utility (KG&E) requested a revenue requirement of \$144.9 million; the Commission awarded a revenue requirement of \$135 million. Thus, the rate case expense of \$4.7 million awarded in

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<sup>84</sup> Wolf Creek Order, pp. 1-5.

that highly contested docket, involving costs for construction of a nuclear power plant, was approximately 3.4% of the revenue requirement. Here, KCP&L initially requested a revenue requirement of about \$50.8 million; the Commission ultimately awarded a revenue requirement of \$21.8 million, which included an award of \$5.6 million for rate case expense.<sup>85</sup> If the 3.4% awarded in the Wolf Creek docket for rate case expense is applied here to the requested revenue requirement of \$50.8 million, KCP&L would be entitled to rate case expense of \$1.73 million; if the 3.4% awarded in rate case expense in the Wolf Creek docket is applied to the awarded revenue requirement of \$21.8 million here, KCP&L would be entitled to rate case expense of only \$741,000.

33. Analyzing this comparison, the Commission also considers the last litigated rate case before the Commission that involved Westar Energy, Inc., and Kansas Gas & Electric Company (collectively Westar), which is the largest electric public utility in Kansas.<sup>86</sup> Westar's Docket No. 05-WSEE-981-RTS (05-981) was a complex rate case that included 18 intervenors, prefiled written testimony submitted by 44 witnesses, and an evidentiary hearing lasting 13 days. Two attorneys appeared on behalf of Westar.<sup>87</sup> In Docket 05-981, Westar requested a revenue increase totaling over \$84 million; the Commission awarded an overall revenue requirement increase of \$38,797,189.<sup>88</sup> The total rate case expense awarded in Docket 05-981 was \$2,081,610.<sup>89</sup> Thus, rate case expense for that contested docket was approximately 5.4% of the revenue requirement. If the 5.4% awarded in the Westar docket for rate case expense is applied here to the requested revenue requirement of \$50.8 million, KCP&L would be entitled to rate case expense of \$2.74

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<sup>85</sup> November 22, 2011 Order, pp. 91, 95.

<sup>86</sup> Docket No. 05-WSEE-981-RTS, In the Matter of the Applications of Westar Energy, Inc. and Kansas Gas and Electric Company for Approval to Make Certain Changes in Their Charges for Electric Service, *Order on Rate Applications*, filed December 28, 2005 (Westar December 28, 2005 Order).

<sup>87</sup> Westar December 28, 2005 Order, pp. 7-10. Counsel appearing on behalf of Westar included Martin Bregman of Westar and Michael Lennen, who previously served as Chairman of this Commission.

<sup>88</sup> Schedules attached to *Order on Petition For Specific Reconsideration, For the Submission of Additional Evidence and Clarification*, filed February 16, 2006 (Westar February 16, 2006 Order), Schedules.

<sup>89</sup> Docket 05-981, Direct Testimony of Mary Jo Struttman, filed September 9, 2005, as updated for additional expenses based upon the Commission's ruling in Westar February 16, 2006 Order.

million; if the 5.4% awarded in rate case expense in the Westar docket is applied to the awarded revenue requirement of \$21.8 million, KCP&L would be entitled to rate case expense of only \$1,177,200.

34. Comparing this proceeding with the Westar docket, the Commission notes several of the same issues were considered, including rate of return, depreciation, and other complex accounting issues. Admittedly, prudence was not an issue in Westar's case. Yet the experience, reputation, and ability of the lawyers representing KCP&L and Westar were comparable. The Commission finds consideration of rate case expense awarded in another recently litigated rate case proceeding is helpful in determining an amount of rate case expense that is just and reasonable to pass through to a utility's ratepayers. Having considered the percentage of rate case expense compared with the revenue requirement awarded in other litigated rate case proceedings before this Commission, we conclude that KCP&L's request here significantly exceeds the percentage allowed in other proceedings that were at least as complex, and arguably much more complex, than this proceeding with as much at stake in terms of financial risk for the companies involved. The Commission has taken this into account in setting rate case expense for this proceeding.

### **C. KCP&L's Initial Estimate**

35. The amount of rate case expense KCP&L initially estimated (\$2.1 million) differed substantially from the amount it ultimately claimed (\$9 million). Three explanations are possible for this discrepancy: (1) the company's initial estimate was simply wrong and grossly inadequate given the issues raised; (2) the company failed to reasonably manage its rate case expenses to stay within – or even close to – the \$2.1 million estimate; and (3) the company made a good faith, reasonable initial estimate but was surprised by a host of complexities, opposition, and new issues that could not be reasonably anticipated.

36. The Commission concludes little or no control was exercised to match the initial \$2.1 million estimate for rate case expense. In filing its Application, KCP&L estimated its rate case

expense would be \$2.1 million based upon prior other rate cases under KCP&L's Resource Plan.<sup>90</sup> KCP&L Witness Weisensee testified that this estimate was based on rate case expense for Docket 09-246 of \$2.3 million, taking into account that some issues had already been vetted and the number of parties involved.<sup>91</sup> No specific person was assigned the responsibility to monitor or keep overall rate case expense within this budgeted amount.<sup>92</sup> When the estimate was developed, KCP&L knew that the rate case would also require a depreciation study, a class cost of service study, and an allocation study and that the issue of prudence had been deferred from the 09-246 Docket to this proceeding.<sup>93</sup> Downey testified that rate case expense was treated like a storm budget, in which the Company knew monthly what kind of expenses were billed and paid but no overall budget was maintained.<sup>94</sup> By the time he became aware that rate case expense had increased significantly over the stated budget, Downey was not sure the company could ask for more then, noting he was not a procedural expert.<sup>95</sup> Downey did not state whether he asked his advisors about this concern.

37. CURB urged the Commission to limit KCP&L's award to the estimate of \$2.1 million<sup>96</sup> because the Company either knew or should have known that this docket would be difficult when its Application was filed. Crane pointed out that the company "blew through this estimate as if it was written in dust."<sup>97</sup> Crane noted several significant issues, including prudence, were deferred from the prior 09-246 Docket and parties knew depreciation, rate of return, and various other accounting issues would be addressed in this docket.<sup>98</sup>

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<sup>90</sup> CURB Exh. 1, CS-80 Rate Case Expense – KCPL, Summary KS, Rate Case schedule – 2010 Rate Case, Direct Filing. Tr. Vol. 15, p. 3385 (Weisensee); Tr. Vol. 16, p. 3664 (Downey). See also Table of Proceedings, *infra* ¶ 6.

<sup>91</sup> Tr. Vol. 15, pp. 3400-02, 3417-18, 3429 (Weisensee); Weisensee Direct, p. 8; Weisensee Rebuttal, p. 8.

<sup>92</sup> Tr. Vol. 15, pp. 3385-86 (Weisensee); Tr. Vol. 16, pp. 3663-64 (Downey).

<sup>93</sup> Tr. Vol. 15, pp. 3389-92 (Weisensee).

<sup>94</sup> Tr. Vol. 16, pp. 3666-67 (Downey).

<sup>95</sup> Tr. Vol. 16, p. 3668 (Downey).

<sup>96</sup> Crane Direct, p. 24.

<sup>97</sup> Crane Direct, p. 17; Tr. Vol. 16, pp. 3929-32 (Crane).

<sup>98</sup> Tr. Vol. 16, p. 3932 (Crane).

38. The Commission shares Crane's concern that KCP&L made no attempt to keep the parties or the Commission informed "about the level of rate case costs being incurred, why that level differed so dramatically from the claim included in the filing, or why that level of cost was appropriate. Any information provided about rate case expense was only elicited as a result of data requests propounded by other parties in the case or by cross-examination of the Company's witnesses."<sup>99</sup> The Company had an affirmative duty to keep the Commission informed by providing appropriate schedules and competent testimony of "all relevant facts and data pertaining to its business and operations" to assist the Commission in arriving at fair, just, and reasonable rates for both the utility and the public.<sup>100</sup> KCP&L did not meet its obligations under this regulation. If the Commission followed this recommendation by CURB, KCP&L would recover rate case expense of \$2.1 million.

#### **D. CURB Proposal for Sharing Rate Case Expense**

39. If the Commission allows KCP&L to recover rate case expense exceeding its estimated \$2.1 million, CURB Witness Crane proposed using a methodology that would share a utility's directly-incurred rate case costs 50/50 between KCP&L and ratepayers, subject to some reasonable maximum. Under this method, shareholders would fund a portion of rate case expense. CURB argued both shareholders and ratepayers benefit from an incentive for the Company to keep down these costs. Ratepayers benefit by receiving utility service at just and reasonable rates; shareholders benefit from having an opportunity to increase their margins.<sup>101</sup> Crane discussed three options for using a sharing mechanism to ensure ratepayers do not have to pay exorbitant rate case costs, which in her opinion would help level the playing field and balance the interest of shareholders and ratepayers.<sup>102</sup>

40. We are not the only utility commission to struggle with the issue of rate case expense. The Missouri Public Service Commission recently initiated a general investigation of rate case

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<sup>99</sup> Crane Direct, p. 18.

<sup>100</sup> K.A.R. 82-1-231(a).

<sup>101</sup> Crane Direct, pp. 25-26; Tr. Vol. 16, pp. 3934-38.

<sup>102</sup> Crane Direct, pp. 27-29.

expense to explore use of a sharing method, such as the one Crane proposed, or to establish a revenue percentage cap on rate case expense passed to ratepayers.<sup>103</sup> Here, if the amount sought for KCP&L-only rate case expense was divided based upon a 50/50 sharing between shareholders and ratepayers, KCP&L-only rate case expense would be approximately \$3.8 million. The Commission has considered this proposal but does not adopt a 50/50 sharing of rate case expense as a matter of policy. Although we recognize our decision apportions responsibility for rate case expenses between ratepayers and shareholders, we decline to adopt a general policy that formally apportions rate case expense as CURB suggests.

#### **E. CURB Alternative Proposal for Calculating Rate Case Expense**

41. CURB Witness Smith presented an alternative proposal that adjusted specific items of rate case expense to remove excessive, duplicative, unreasonable and inadequately documented charges. He discussed individual instances that, in his opinion, reflected unreasonable, excessive or questionable items included in KCP&L's rate case claim, dividing his analysis among (1) Overall Legal Fee Concerns,<sup>104</sup> (2) Specific Concerns Regarding Legal Fees and Expenses Claimed by KCPL,<sup>105</sup> and (3) KCPL Consultant Charges.<sup>106</sup> Under Smith's proposal, the allowance for KCP&L's rate case expense should be limited to \$4.913 million, including \$1.423 million for the Commission, its Staff and CURB costs. The amount of \$4.913 million included approximately \$1.9 million for addressing Iatan Unit 2 prudence issues and \$3 million "for other 'normal' rate case costs, including the KCC and CURB assessment."<sup>107</sup> Also, Smith proposed a cost recovery period of ten years for rate case expense addressing the Iatan Unit 2 prudence issue, which would produce an annual allowance of approximately \$190,000 per year, and a cost recovery period over four years, for an annual allowance of approximately \$754,000. Thus, the

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<sup>103</sup> In the Matter of a Working File to Consider Changes to Commission Rules and Practices Regarding Rate Case Expense, Missouri Public Service Commission File No. AW-2011-0330, *Order Directing Staff to Investigate and Opening a Repository File*, issued April 27, 2011.

<sup>104</sup> Smith Direct, pp. 17-19.

<sup>105</sup> Smith Direct, pp. 19-30.

<sup>106</sup> Smith Direct, pp. 31-38.

<sup>107</sup> Smith Direct, p. 8; Schedule RCS-1, Schedule 1.



total annual cost recovery would be approximately \$944,000 over four years and then \$190,000 over an additional six years.<sup>108</sup>

42. The Commission has considered Smith's proposal removing charges he found excessive, duplicative, unreasonable and inadequately documented; we have also considered Smith's proposal regarding cost recovery for rate case expense. We decline to accept either proposal; however, we have considered Smith's analysis of individual issues among the factors we have taken into account in reaching our decision.

#### **F. Lodestar Calculation**

43. By far the largest portion of rate case expense requested in this proceeding is for lawyers' fees. The record before us indicates that 47 timekeepers (including attorneys, paralegals, and consultants) associated with six law firms billed 16,407 hours to this case.<sup>109</sup> In Kansas, not only does the rate case expense need to be reasonable, but also the attorney fees themselves must be reasonable.<sup>110</sup> To arrive at a reasonable attorney fee, Kansas courts commonly multiply a reasonable number of hours worked by a reasonable hourly rate; this gives the court a "lodestar amount" that may be adjusted further by other factors set out in Rule 1.5(a).<sup>111</sup> If the eight factors of Rule 1.5 are considered in initially making the lodestar calculation, further adjustments may not be needed.<sup>112</sup> Lodestar is defined as: "A reasonable amount of attorney's fees in a given case, [usually] calculated by multiplying a reasonable number of hours worked by the prevailing hourly rate in the community for similar work[.]"<sup>113</sup> Because so much of the rate case expense here is attributable to attorney fees, the Commission will consider the lodestar calculation in determining an appropriate amount to award for this proceeding. For guidance, the Commission has reviewed how district courts use the lodestar calculation. Consistently, those courts required each lawyer

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<sup>108</sup> Smith Direct, p. 9; Schedule RCS-1, Schedule 1.

<sup>109</sup> Attachment A, p. 2.

<sup>110</sup> Rule 1.5(a).

<sup>111</sup> *Sheldon*, 237 F.Supp.2d at 1274.

<sup>112</sup> 237 F.Supp. at 1274.

<sup>113</sup> Black's Law Dictionary, (WEST 8th Ed., 2008), p. 960.

for whom fees were sought to provide meticulous, contemporaneous time records documenting the time allotted to specific tasks.

44. Using a lodestar analysis, the Commission undertook an extensive analysis of invoices submitted by these timekeepers to make just and reasonable adjustments to these billings. A problem we consistently encountered in reviewing records submitted by KCP&L was the use of block billing. This was particularly problematic in trying to sort out what attorney work was duplicated, both within a law firm and among attorneys at several law firms. We found block billing was used for time expended during a day even if multiple tasks were performed. For example, Cafer billed 8.5 hours on June 24, 2010, for the following activities: "Preparation for CCA witness sessions; conference call with Schiff; conference call with clients re: accounting rebuttal; review draft of DRs; draft letter and serve DRs on staff; draft and serve follow-up letter; emails with clients and consultants; obtain and forward confidential version of Drabinski's revised testimony; draft letter for second set of DRs."<sup>114</sup> Block billing was even used when work had to be billed to more than one jurisdiction<sup>115</sup> or involved issues not included in this rate case proceeding.<sup>116</sup> When block billing is used, the reviewer cannot decipher how much time is spent on a particular task, which is necessary to determine whether tasks are duplicated with respect to that activity. For example, we cannot decipher what amount of 8.5 hours Cafer billed for June 24, 2010, was spent preparing for the CCA session.<sup>117</sup> Attorneys clearly know how to record separate time for specific projects on a daily basis. Anne Callenbach of Polsinelli Shughart billed her daily time using a granular identification of tasks; on June 22, 2011, Callenbach billed a total of 7.90

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<sup>114</sup> KCP&L Exh. 2, Weisensee CD, Weisensee Workpapers, Cafer.pdf, Invoice No. 01-01-10, p. 2.

<sup>115</sup> Tr. Vol. 15, pp. 3537-45 (Polsinelli Shughart billings included work on MO Public Service Commission proceedings), 3561-63 (Cafer Law and Schiff Hardin bills for attending MO PSC hearing), 3567-69 (Schiff Hardin billings for work in other jurisdiction); CURB Exh. 21 (Polsinelli Shughart bills), Exh. 26 (Cafer and Schiff Hardin bills), and Exh. 28 (Schiff Hardin bills).

<sup>116</sup> Tr. Vol. 15, pp. 3550-54 (Cafer Law billings included research on predetermination issue); CURB Exh 24 (Cafer Law bills).

<sup>117</sup> Tr. Vol. 17, pp. 4100 (Harden), and 4155-56, 4165 (McClanahan).

hours by dividing her time into 5 separate notations.<sup>118</sup> Unfortunately, the Commission has found no other attorney invoices that follow this example.

45. KCP&L did not consider block billing problematic. Rush testified that no duplication of billing occurred in this case, which we find borders on stating a deliberate falsehood but will deem to be a sign of indifference. Rush stated that each attorney had individual assignments and that, even if more than one attorney read the same witness testimony, each reading was needed to understand a particular aspect of an issue assigned to each attorney.<sup>119</sup> Rush asserted that KCP&L questioned law firms when attorneys billed 13 to 17 hours a day to determine if these were legitimate hours; but no correspondence or other written documentation confirms that KCP&L challenged any of these billings.<sup>120</sup>

46. We discuss this problem with block billing in more detail below. For future proceedings, the Commission cautions parties that any request for attorney fees to be included in rate case expense must provide information complying with Rule 1.5, by which attorneys must describe their time allotted to specific issues or tasks “by submitting meticulous, contemporaneous time records that reveal, for each lawyer for whom fees are sought, all hours for which compensation is requested and how those hours were allotted to specific tasks.”<sup>121</sup>

### **1. Number of reasonable attorney hours.**

47. The first step in the lodestar calculation is determining a reasonable number of hours spent by counsel for the party seeking recovery of attorney fees. Here KCP&L has the burden to establish, for each lawyer for whom it seeks to recover fees, that meticulous, contemporaneous time records have been maintained documenting all hours for which compensation is requested and documenting how those hours were allotted to specific tasks.<sup>122</sup> If time records are “sloppy

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<sup>118</sup> CURB Exh. 14, p. 9. The same invoice is at KCP&L Exh. 2, Weisensee CD, Weisensee Workpapers, Polsinelli.pdf, Professional Services Through 6/30/10, p. 9. See Tr. Vol. 16, pp. 378-80 (Rush); Staff Exh. JDM-2, Polsinelli Invoices ending April 30, 2010, pp 6-8.

<sup>119</sup> Tr. Vol. 16, pp. 3747-48 (Rush).

<sup>120</sup> Tr. Vol. 16, pp. 3736-37 (Rush).

<sup>121</sup> *Case*, 157 F.3d at 1250. Cf., *Rural Telephone*, November 2001 Order, ¶¶ 27-32.

<sup>122</sup> 157 F.3d at 1250.

and imprecise” and do not document adequately how the attorney utilized large blocks of time, then the Commission is justified in reducing the reasonable number of hours.<sup>123</sup> The Commission may reject “reconstructed” time records.<sup>124</sup> Also, the Commission may reject duplication arising from more than one attorney doing the job of one attorney. An applicant for attorney fees must exercise “billing judgment” by “winnowing the hours actually expended down to the hours reasonably expended.”<sup>125</sup> An attorney is not allowed to recover fees from an adversary that could not be billed to the client; such fees are presumptively unreasonable.<sup>126</sup> Finally, overall hours expended on each task must be considered to determine if they are reasonable; the number of reasonable hours may be reduced by hours that are “unnecessary, irrelevant and duplicative.”<sup>127</sup>

48. Summary of Hourly Fees in Attachment A. The Summary of Hourly Fees from both attorneys and consultants set out in Attachment A to this Order is drawn from schedules Weisensee attached to his direct testimony.<sup>128</sup> In this discussion, we focus on hours attributable to attorney fees and later discuss hours attributable to consultants. The Summary of Hourly Fees reflects that KCP&L seeks to recover rate case expense reflecting 16,407.02 hours of work by timekeepers at law firms,<sup>129</sup> arguing these hours were justified by the complexity, number, and nature of issues raised in this docket.

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<sup>123</sup> 157 F.3d at 1250.

<sup>124</sup> *Shrout v. Holmes*, 2001 WL 980238, at 2 (D.Kan., Aug. 10, 2001)(two-thirds of billing hours disallowed because attorney did not keep contemporaneous time records).

<sup>125</sup> 237 F. Supp. 2d at 1275.

<sup>126</sup> 157 F.3d at 1250.

<sup>127</sup> *Carter v. Sedgwick County, Kan.*, 36 F.3d 952, 956 (10<sup>th</sup> Cir. 1994). See *Case*, 157 F.3d at 1250 (more important than testimony of expert witnesses in deciding reasonableness of hours billed is the court’s discretionary determination of how many hours, in its experience, should have been expended on the specific case, given the maneuverings of each side and the complexity of the facts, law, and litigation).

<sup>128</sup> Weisensee Direct, Schedules JPW2010-11 through JPW2010-25.

<sup>129</sup> The Commission is astonished, if not shocked, at the total number of billable man-hours claimed by the company as reimbursable and appropriate to be passed through to ratepayers. Basic math demonstrates the total hours equates to 7.95 years of billable work, assuming no vacation and a 40-hour work week without a break, and, as noted elsewhere, *infra*, ¶ 95, one of these law firms is already recovering in excess of \$20 million for its work during the construction management phase of the Iatan project.

49. We will not allow KCP&L to recover rate case expense for services provided by two of the six law firms listed, Duane Morris and Morgan Lewis. In the November 22, 2010 Order, we denied recovery in rate case expense for work done by these law firms because the hours billed duplicated work performed by other attorneys participating in this proceeding and evidence has not established that their work was actually necessary and essential to proper representation of KCP&L in this proceeding.<sup>130</sup> No evidence presented on reconsideration has changed our minds regarding this decision. A total of 600 hours is listed in the Summary for work by attorneys at these two firms.<sup>131</sup>

50. Having reviewed the record before us, we disallow all hours billed by attorneys at SNR Denton because KCP&L has not provided evidence supporting inclusion of these charges in rate case expense for this docket.<sup>132</sup> Billings for Steiner do not attempt to give meticulous, contemporaneous descriptions of work performed or allot time to specific tasks related to this docket. Apparently KCP&L had an unwritten understanding with SNR Denton regarding how Steiner's hours would be estimated and divided among KCP&L's jurisdictions, without requiring actual, contemporaneous records of work performed on this docket.<sup>133</sup> The 144.18 hours billed for Steiner are disallowed. Also, KCP&L offered no evidence to explain why an additional 19.7 hours billed by SNR Denton should be allowed. This time duplicated work by other outside attorneys and will not be allowed as rate case expense.

51. For us to determine a reasonable number of attorney hours to perform a lodestar calculation, hours billed by non-attorney timekeepers at law firms must be removed. But KCP&L's evidence did not identify which timekeepers were attorneys or why fees for non-attorneys at law firms should be recovered as rate case expense. We will only include hours

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<sup>130</sup> November 22, 2010 Order, p. 93; *Case*, 157 F.3d at 1252.

<sup>131</sup> Duane Morris billed 584.48 hours, and Morgan Lewis 159.18 hours. The actual total is 599.66, which we round to 600.

<sup>132</sup> SNR Denton (formerly Sonnenschein Nath & Rosenthal) billed hours totaling 163.88, which we round to 164 hours.

<sup>133</sup> Tr. Vol. 16, pp. 3782-84 (Rush); CURB Exh. 5, 6, and 7. Rush admitted that nothing in the record confirmed that Steiner actually devoted 25% of his time to the Kansas rate case when he was at SNR Denton. Tr. Vol. 16, p. 3784 (Rush).

clearly attributable to attorneys in determining reasonable attorney hours. Based upon our review of invoices and bills from Schiff Hardin, we conclude nine timekeepers are attorneys — Roberts, Okizaki, Gould, Schermer, Hitchcock, Kolton, Montgomery, Rowe and Markey; these nine attorneys billed a total of 4,549.70 hours. Invoices and hours billed suggest four Schiff Hardin attorneys were primarily involved this proceeding: Roberts, Okizaki, Gould and Schermer.

52. A review of invoices and bills from Polsinelli Shughart indicate the following are attorneys: Caro, Callenbach, Kane, Hagedorn, Sear, Willman, Stohs, Breer, Rupp, Morgan, and Sneed; these 11 timekeepers billed a total of 5,298 hours. Invoices and hours billed indicate four attorneys were primarily involved in this proceeding: Caro, Callenbach, Kane and Hagedorn.

53. In reviewing the Summary of Hourly Fees to calculate a reasonable number of attorney hours, the Commission has excluded all hours billed by attorneys at law firms Duane Morris, Morgan Lewis, and SNR Denton. We note that Cafer Law listed hours for only one attorney, who billed 1,639 hours. Only hours billed by the 9 attorneys at Schiff Hardin (4,550 hours), the 11 attorneys at Polsinelli Shughart (5,298 hours), and the one attorney at Cafer Law (1,639 hours) will be considered in determining a reasonable number of attorney hours for the lodestar calculation. The combined total is 11,487 hours.

54. Exercise of billing adjustment by individual law firms. The Commission notes that evidence in the record does not reflect that any of the law firms involved in this proceeding made a billing adjustment or that KCP&L made any effort to require them to do so. Nowhere is an adjustment seen for lost time, duplication of services, or time spent familiarizing oneself with the law. With regard to Polsinelli Shughart, at the hearing, KCP&L pointed out an occasional invoice from Polsinelli Shughart that indicated “No Charge” for a specific item that involved more than one attorney and clearly duplicated services.<sup>134</sup> But a review of hundreds of pages of invoices from Polsinelli Shughart does not show a consistent effort to adjust billing to ensure that the work of attorneys in the firm was not duplicated in billing or to account for those occasions when

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<sup>134</sup> McClanahan Direct, Exh. JDM-1, Polsinelli Shughart December 2009 Invoice # 687731, pp. 2-8.

duplication is unavoidable, such as when a new attorney is brought into the case and must “get up to speed” on the facts and the law. In fact, additional examples of duplicate billing were identified at the hearing.<sup>135</sup> In making this adjustment, we note that KCP&L’s decision to involve so many law firms required numerous attorneys to get “up to speed” on the issues, including each attorney needing to become familiar with this general area of law. Acquiring such background knowledge should have been absorbed by the law firms or by KCP&L in light of its decision to duplicate these efforts.<sup>136</sup> Based upon its review of invoices and billing statements, the Commission concludes that it is just and reasonable to reduce the 5,298 attorney hours billed by the 11 attorneys at Polsinelli Shughart by 10% to make some accounting for duplication of work, lost time, and coming up to speed by attorneys at this firm.<sup>137</sup> This adjustment brings reasonable attorney hours for Polsinelli Shughart to 4,768 hours.

55. More alarming was the duplication seen in reviewing Schiff Hardin invoices and billing statements. Schiff Hardin invoices show a constant and repetitive duplication of effort by the four primary attorneys involved in this proceeding. All four attorneys consistently billed for drafting, and repeatedly redrafting, the same direct testimony, which was filed with KCP&L’s Application. Testimony they drafted involved several witnesses that KCP&L has assured the Commission were top experts in their respective fields.<sup>138</sup> By the time the Application was filed on December 17, 2009, these four attorneys had already billed 830 hours and over \$315,000 in fees.<sup>139</sup> The evidence shows that Schiff Hardin made no billing adjustments here. No evidence discussed why such duplication was necessary to draft testimony for expert witnesses or to perform similar work. Throughout these proceeding, Schiff Hardin brought in other firm attorneys but made no adjustment for the time needed to acquire “background” information about this area of law or this proceedings. Also, Schiff Hardin attorneys drafted and redrafted testimony

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<sup>135</sup> Tr. Vol. 15, pp. 3537-38 (Weisensee); CURB Exh. 19 (Polsinelli Shughart August 2009 invoice).

<sup>136</sup> *Case*, 157 F.3d at 1253.

<sup>137</sup> *Kansas Penn Gaming, LLC v. HV Properties of Kansas, LLC*, Case No. 08-4111-RDR, Memorandum and Order, Slip Op. filed May 18, 2011, at p. 15.

<sup>138</sup> CURB Exh. 16 and 17.

<sup>139</sup> Attachment A, Summary of Hourly Fees, p. 2.

as if the attorneys and witnesses were unfamiliar with the Iatan Project or with KCP&L. Based upon the clear duplication of effort by attorneys at Schiff Hardin and lack of any billing adjustment by Schiff Hardin, the Commission concludes that it is just and reasonable to make a billing adjustment for Schiff Hardin attorney hours. In light of the unchecked billings by this firm, we reduce attorney hours for Schiff Hardin by 30% to remove duplication of work by these attorneys.<sup>140</sup> We calculate 4,550 hours billed by Schiff Hardin attorneys reduced by 30%, or 1,365 hours, results in a total of 3,185 hours.

56. As with the other firms, Cafer Law made no billing adjustment to account for background research needed to become familiar with the general area of law involved in the numerous issues presented in this case.<sup>141</sup> The unadjusted invoices would suggest that 100% of time billed reflected productive time, which seems contrary to real-world experience. The Commission concludes that it is just and reasonable to make a modest 5% adjustment to reduce the 1,639 hours billed by Cafer Law, reducing its billable hours by 82 hours for a total of 1,557 attorney hours.

57. Exercising billing judgment regarding attorney hours billed by Polsinelli Shughart, by Schiff Hardin, and by Cafer Law does not eliminate the problem of duplicate billing. Adding together the adjusted attorney hours for Polsinelli Shughart (4,768 hours), Schiff Hardin (3,185 hours), and Cafer Law (1,557 hours), we calculate a total of 9,510 attorney hours. But a review of the record in this proceeding establishes an obvious overlap of work among attorneys at Cafer Law, Polsinelli Shughart, and Schiff Hardin law firms, which we address next.

58. Billing Adjustments for Work Done by Multiple Law Firms. The Commissioners, all of whom are lawyers, find it remarkable and evidence of the unreasonable nature of the claimed expense that among the 34 attorneys working for six law firms and billing 12,395 attorney hours in this case, none of them made any adjustments to their bills. No adjustments were made for unproductive time, for duplication of efforts among lawyers in the same firm, or

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<sup>140</sup> *Kansas Penn Gaming*, at p. 15.

<sup>141</sup> 157 F.3d at 1253.



for duplication of efforts among lawyers working in different law firms. The implication is that the work was 100% productive and non-duplicative. The Commission has made an adjustment to attempt to account for duplication in billings and to account for background research on issues by attorneys at Polsinelli Shughart, by attorneys at Schiff Hardin, and by the attorney at Cafer Law. A cursory review of invoices submitted by all the outside law firms in this proceeding, including testimony submitted by KCP&L's witnesses, and working papers contained in KCP&L Exhibit 2 and responses to DRs 554 & 555<sup>142</sup> confirms that no billing adjustment was made overall in relation to rate case expense requested for this proceeding. In calculating reasonable attorney hours, the Commission has already excluded hours billed by attorneys from Duane Morris, Morgan Lewis, and SNR Denton due to the lack of evidence to support recovering for billings by these firms in rate case expense. Identifying duplication of attorney work among law firms is tedious and requires laborious review of invoices that was made impossible here because attorneys billed work using block descriptions rather than detailed descriptions of work efforts. Two areas in particular illustrate this problem.

59. First, we consider the time spent by KCP&L's attorneys refuting testimony of Staff Witness Drabinski on prudence. KCP&L Witness Downey, who was President and Chief Operating Officer at KCP&L during implementation of the Resource Plan and the 2010 Evidentiary Hearing, noted that the primary purpose of the 10-415 Docket was to address

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<sup>142</sup> Two CDs are included in the administrative record of the proceeding. One CD contains Staff's DRs 554 and 555 and KCP&L Responses to these DRs. This CD was made a part of the record in the November 22, 2010 Order, p. 89. Because the CD had not yet been submitted, the Commission directed Staff to file a copy in its January 6, 2011 Order, ¶ 79, which was done on January 13, 2011. Staff's DRs 554 and 555 and KCP&L's overview responses are filed as Attachment B to Staff's Notice of Filing of Revised Schedules and Documents as Requested by the Commission; the CD containing KCP&L's Responses to DRs 554 and 555 are submitted as Attachment C to Staff's Notice. To help clarify what is contained in the administrative record, we note that Staff Witness Bill Baldry attached two CDs to his Direct Testimony that also has this information; one CD contains Staff's DR 554 and KCP&L's Responses, the other CD contains Staff's DR 555 and KCP&L's Responses. In addition to the CD with DRs 554 and 555, a second CD, which includes Weisensee's workpapers and additional invoices, was filed as KCP&L Exh. 2 in the September 2011 evidentiary hearing and is referred to throughout this Order as KCP&L Exhibit 2. See *infra*, ¶ 14. As did the parties, we refer to the CD containing Weisensee's workpapers as KPC&L Exh. 2; we refer to the CD containing DRs 554 and 555 and Responses as DRs 554 and 555. See Tr. Vol. 17, pp. 3969-70.

prudence so that KCP&L could recover its investment in the Iatan Project.<sup>143</sup> He testified here that, after Drabinski filed his prudence testimony, the Company “made management decisions strategically to significantly increase our effort in the area,” noting this was “a 2 billion dollar bet” on the investment in Iatan.<sup>144</sup> KCP&L concluded it was “absolutely mission critical to the Company to explain, defend and validate all of the work we had done over the past 5 years, so, yes, we did ramp up dramatically because we felt there was a fundamental risk to the Company, to its customers and to all the other stakeholders who were involved in this decision.”<sup>145</sup> Attorneys working on this proceeding obviously took to heart Downey’s directive that made discrediting Drabinski’s testimony on prudence “absolutely mission critical.”

60. CURB Witness Harden examined attorney hours billed after Drabinski’s direct testimony was filed on June 15, 2010.<sup>146</sup> Harden reviewed attorney invoices covering the 20 calendar days from June 10 to 30, 2010, looking for references to reviewing, analyzing, or discussing Drabinski’s testimony. She calculated 17 different timekeepers from four law firms reported 974.7 billable hours during these 20 days, totaling \$351,843.50 in fees.<sup>147</sup> Harden’s calculations included 20.8 hours for Duane Morris, which has already been disallowed, and 23.5 hours for O. Glover of Schiff Hardin, who does not appear to be an attorney.<sup>148</sup> After deducting 44.3 hours for those two adjustments, attorney hours billed for work on Drabinski’s testimony during this 20-day period is 930 hours. In reviewing daily descriptions reported in attorney invoices, Harden found block-form descriptions that included work on other tasks as well as

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<sup>143</sup> Downey Direct, p. 2.

<sup>144</sup> Tr. Vol. 16, p. 3667 (Downey).

<sup>145</sup> Tr. Vol. 16, pp. 3667-68 (Downey).

<sup>146</sup> The Drabinski testimony filed June 15, 2010, was treated as confidential. Due to concern about confidential information contained in Drabinski’s Direct Testimony, a draft of at least portions of this testimony was given to attorneys representing KCP&L as early as June 10, 2011. See CURB Exh. 15, pp. 1, 2, and 6 (pages of invoices from Cafer Law, Schiff Hardin, and Polsinelli Shughart, respectively). A redacted version of Drabinski Direct Testimony was filed on June 24, 2011.

<sup>147</sup> Harden Direct, p. 4, and Exh. SMH-1.

<sup>148</sup> Harden Direct, Exh. SMH-1.

reviewing Drabinski's testimony. As a result, Harden testified she could not pinpoint exactly how many hours were devoted to reviewing this testimony during those 20 days.<sup>149</sup>

61. To illustrate the problem with block billing, Weisensee was given CURB Exhibit 15 at the hearing; this exhibit contains invoices for June of 2010 from Cafer Law (p. 1), Schiff Hardin (pp. 2-3), Duane Morris (pp. 4-5), Polsinelli Shughart (pp. 6, 8) and Charles Whitney at Duane Morris (p. 7).<sup>150</sup> These pages show that timekeepers at Cafer Law (Cafer), at Schiff Hardin (Roberts, Okizaki, Schermer, Gould, and Glover), at Duane Morris (Bates, Cook and Whitney), and at Polsinelli Shughart (Kane, Caro, Hagedorn and Callenbach) used various descriptions for the task of reviewing Drabinski's testimony. For example, Roberts of Schiff Hardin credited four hours on 6/11/10 for the following work: "Review of Walter Drabinski's testimony; confer with Carrie Okizaki and Eric Gould regarding same and CCA process for Dan Meyer and myself; telephone conference with Jerry Reynolds regarding Drabinski's testimony."<sup>151</sup> This invoice shows that four other timekeepers at Schiff Hardin also reviewed and analyzed Drabinski's testimony that day, as well as other work resulting in billing these hours: Okizaki, 7.75 hours; Schermer, 2.25 hours; Gould, 8.75 hours; and Glover 4.75 hours. Like Harden, this Commission has no way to determine what portion of the 27.5 hours billed to KCP&L that day by Schiff Hardin was spent reviewing Drabinski's testimony versus doing other tasks. This problem is compounded by multiple timekeepers at multiple firms recording multiple events in block billing during the course this proceeding.

62. In addition to Harden's review of billings for 20 days in June 2010, invoices show that during June and July 2010, Cafer Law billed 314 hours, Polsinelli Shughart billed 1,162 hours, and Schiff Hardin billed 4,051.60 hours; this is a total of 5,530 hours over this two-month period.<sup>152</sup> No evidence suggests any law firm or KCP&L management in filing its request for rate case expense made a billing adjustment in any way to account for duplication of effort with

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<sup>149</sup> Harden Direct, pp. 4-5, and Exh. SMH-1.

<sup>150</sup> Tr. Vol. 15, pp. 3520-27, and CURB Exh. 15, Portions of Law Firm Invoices for June 2010.

<sup>151</sup> CURB Exh. 15, Aug. 31, 2010 Invoice for Schiff Hardin, p. 6.

<sup>152</sup> Attachment A, pp. 1-2.

regard to attorney review of Drabinski's testimony. Much of this work was claimed to focus on developing prefiled rebuttal testimony or to be in response to prefiled testimony of witnesses, particularly Drabinski. The Commission, based on our experience as lawyers and in presiding over hearings before this agency, finds it is unreasonable to conclude that rebutting testimony of a single witness (Drabinski) and a single issue (prudence) is such a complex legal exercise that it requires the effort of 17 timekeepers in four law firms billing almost 1,000 hours.<sup>153</sup>

63. The Commission understands KCP&L wanted to challenge and rebut Drabinski's testimony criticizing management's handling of the Iatan Project, but KCP&L made the management decision to ramp up significantly to meet this challenge without regard for cost. Now KCP&L asks us to require ratepayers to pay the entire expense for management's decision to "ramp up significantly" because management decided it was "absolutely mission critical . . . to explain, defend and validate all of the work [management] had done over the past 5 years."<sup>154</sup> While challenging and rebutting testimony is important in any rate case, the Commission expects law firms to exercise judgment with regard to fees that will be passed through to ratepayers, just as a law firm does for clients directly represented by the firm. Because neither the firms nor the Company make adjustments in billings, the Commission finds it just and reasonable to reduce the reasonable number of attorney hours by 310 hours, or approximately one-third of the hours Harden attributed to working on Drabinski's testimony during June 2010. The Commission deducts 310 hours from the 9,510 attorney hours, which totals 9,200 attorney hours.

64. A second example of duplicate attorney work among law firms is witness training. In its November 22, 2010 Order, the Commission denied KCP&L's request to include billings for the Communications Counsel of America (CCA) in rate case expense.<sup>155</sup> The Commission found preparation of witnesses is routinely part of the services attorneys perform before a hearing and, in light of the numerous capable attorneys hired to litigate this proceeding, the Commission

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<sup>153</sup> Attachment A, pp. 1-2.

<sup>154</sup> Tr. Vol. 16, pp. 3667-68 (Downey).

<sup>155</sup> November 22, 2010 Order, p. 92.

disallowed rate case expense for CCA as duplicative.<sup>156</sup> KCP&L urged the Commission to reconsider its decision disallowing CCA expenses and offered additional evidence to support their recovery. Before discussing the duplication of attorney work connected with the CCA sessions, we address KCP&L's argument that expenses for CCA should be allowed as rate case expense.

65. The Duane Morris law firm hired CCA "to assist Duane Morris in giving legal advice to KCP&L with respect to certain aspects of the Iatan Projects."<sup>157</sup> This Consulting Agreement fails to define what professional services CCA will provide to Duane Morris in advising KCP&L, but it discusses fees "to cancel or reschedule a seminar."<sup>158</sup> CCA expenses "for sessions" were billed to KCP&L c/o Albert Bates, Jr., at the Duane Morris law firm; no hourly rate is shown.<sup>159</sup> Evidence shows CCA was retained to provide Witness Development Skills Labs for this rate case on December 9, 2009, well before Drabinski filed his testimony on prudence. Invoices from CCA indicate three Witness Development Skills Labs were conducted during 2010: Phase I for three days, June 7-10, with 5-8 participants and 2 consultants; Condensed Phase I for two days, June 30-July 1, with 2 participants and 1 consultant; and Phase II for 2.5 days on July 12-14, for 9-12 participants and 3 consultants.<sup>160</sup> The total amount KCP&L asks to be included as rate case expense for CCA is \$102,997.45.<sup>161</sup>

66. Evidence KCP&L has offered does not change the Commission's decision to disallow expenses for CCA in rate case expense. While witness preparation might be valuable for company employees, training for outside expert consultants and lawyers is an inappropriate expense to be borne by ratepayers. The fundamental reason a company hires outside consultants, experts, and specialist lawyers is the skill and training those individuals already possess to do their jobs. Moreover, the outside expert or lawyer retains the intellectual capital associated with

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<sup>156</sup> November 22, 2010 Order, p. 92, citing *Sheila A. v. Whiteman*, 259 Kan. 549, 568-69, 913 P.2d 181 (1996).

<sup>157</sup> KCP&L Exh. 1, p. 5.

<sup>158</sup> KCP&L Exh. 1, p. 6.

<sup>159</sup> Tr. Vol. 17, pp. 3969-71 (Weisensee); Weisensee Direct, Schedule JPW2010-24.

<sup>160</sup> KCP&L Exh. 2, Weisensee Workpapers, CCA.pdf, pp. 1-10.

<sup>161</sup> Weisensee Direct, Schedule JPW2010-10 and Schedule JPW2010-24.

such training and is unjustly enriched by receiving it at ratepayer expense. The Commission finds it inappropriate for KCP&L to ask its ratepayers to bear the expense of training outside, well-paid expert witnesses and experienced attorneys. While KCP&L management can decide to incur this expense, the Commission will not allow recovery for CCA seminars from ratepayers and reaffirms its decision denying recovery of the CCA fees and expenses in rate case expense.

67. The problem of recovery for CCA fees and expenses is exacerbated by billing time and expenses by outside counsel and witnesses who attended the CCA training sessions. In reviewing the evidence presented in this proceeding, the Commission realized that merely disallowing the bill for CCA services does not address the duplication of billings by those participating in CCA sessions. A review of attorney invoices quickly reveals that the CCA sessions were not limited to training lay witnesses. The June 2010 invoice for the Cafer Law shows Cafer devoted six days to preparing for and attending CCA training, a total of 54.25 hours in one week. Then, on June 29-30, 2010, Cafer billed an additional 16.25 hours to travel to and prepare for CCA training in Chicago and to “attend CCA training for Meyers and Roberts.”<sup>162</sup> Expenses of \$1,739 for attending these two seminars were also listed in her invoice. Had Cafer been the only attorney preparing for and attending the CCA sessions, perhaps including that cost in rate case expense could have been justified. But invoices from Polsinelli Shughart<sup>163</sup> and Schiff Hardin<sup>164</sup> reflect that attorneys from those law firms also prepared for and attended these sessions.

68. CURB Witness Harden looked at the expense of CCA training. She accumulated hours billed by attorneys to prepare for and attend CCA sessions for four law firms: Cafer Law, Polsinelli Shughart, Schiff Hardin, and SNR Denton. She estimated the total charges for this training, including CCA and law firm charges, was over \$410,000. In Exhibit SMH-4, Harden

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<sup>162</sup> KCP&L Exh. 2, Weisensee Workpapers, Cafer FINAL.pdf, Cafer Statement July 1, 2001, Invoice No. 070110, pp. 2-3.

<sup>163</sup> KCP&L Exh. 2, Weisensee Workpapers, Polsinelli.pdf, Invoice No. 731115 for June 2010, pp. 2-5, 11-14.

<sup>164</sup> KCP&L Exh. 2, Weisensee Workpapers, Schiff-Services, June\_1\_2010\_to\_September\_30\_2010.pdf, Invoice No. 1509969, pp. 2-11, 26-33.

listed the nine witnesses trained in the CCA sessions: Downey, Heidtbrink, Davis, Bell, Archibald, Giles, Roberts, Blanc and Meyer.<sup>165</sup> Assuming these figures, we note the average cost to train each witness was \$45,000 per witness for each of the nine witnesses. The Commission concludes that this amount and work effort by consultants is not prudently incurred and it would be neither just nor reasonable to expect ratepayers to bear such costs.

69. The Commission has already deducted hours attributable to SNR Denton in calculating reasonable attorney hours. After deducting SNR Denton's hours from the total reached by Harden, attorneys at the other three firms billed 875 attorney hours to prepare for and attend CCA training. The Commission further notes that the hours billed include the most experienced attorneys in KCP&L's legal team -- Cafer, Caro, Roberts, and Okizaki. Presumably the hourly rate for these attorneys already takes into account their experience, prior training, and success in working with witnesses. Once again, neither the law firms nor KCP&L made any billing adjustment for the hours incurred preparing for and attending the CCA training sessions. While KCP&L management may decide specialized training for witnesses was appropriate to prepare its employees as well as hired consultants and attorneys for hearing, we find no evidence suggests this training was actually necessary or essential for KCPL to present its case here. The Commission concludes the decision to employ CCA to train witnesses, outside counsel and hired experts for this proceeding was unreasonable and imprudent. Having reviewed the evidence, and taking into account the experience and knowledge of the attorneys involved here, the Commission concludes that it is just and reasonable to reduce by 875 hours the total number of hours to calculate reasonable attorney hours. This results in a total of 8,325 reasonable attorney hours.

70. Billing Errors. During the hearing, it became apparent that parties were still identifying errors in invoices and billing statements submitted by law firms.<sup>166</sup> The Commission understands that, due to the hundreds of invoices submitted and reviewed in this proceeding,

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<sup>165</sup> Harden Direct, p. 18, Exh. SMH-4. See Tr. Vol. 17, p. 4021 (Weisensee) (listing witnesses trained at CCA sessions).

<sup>166</sup> Tr. Vol. 15, pp. 3532-69, discussing CURB Exh. 17 through Exh. 28 (Weisensee).

errors will be found. But once again, no adjustments were made to the invoices to account for billing errors. The presumption presented to the Commission was that for more than 16,000 billable hours of six law firms, none of it had any errors. During the hearing, CURB identified numerous billing errors when questioning Weisensee. Identical billings for the same service by the same timekeeper were pointed out in Schiff Hardin billings.<sup>167</sup> Billings by Polsinelli Shughart showed time entries were miscoded to this proceeding that should have been billed to other KCP&L jurisdictional proceedings.<sup>168</sup> Cafer Law invoices illustrated the problem with using block billing for tasks involving different jurisdictional proceedings.<sup>169</sup> The Commission does not know, and cannot know, how many undiscovered billing errors remain in the invoices presented. What the Commission knows from its review of this record is that neither the law firms nor KCP&L made any billing adjustment to account for billing errors in attorney hours. And it is unreasonable to conclude that no billing errors were made by the 34 lawyers at six law firms billing a total of 12,395 hours. The Commission finds it just and reasonable to make a 5% adjustment to account for billing errors by deducting 416 hours resulting in a total number of 7,909 reasonable attorney hours to use in making a lodestar calculation.

71. Summary. Our effort to determine reasonable attorney hours among the three law firms is a difficult task that defies precision. Having reviewed the evidence presented on rate case expense as well as evidence from the earlier proceeding in this docket, this Commission exercises its discretion and concludes that, for purposes of making a lodestar calculation, 7,909 hours is an appropriate number to use for reasonable attorney hours for this proceeding.

## **2. Reasonable hourly rate for attorney work.**

72. After determining a number to use for reasonable attorney hours, to complete the lodestar calculation, the Commission must determine a reasonable rate. To do this, the

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<sup>167</sup> Tr. Vol. 15, pp. 3532-34 (Weisensee); CURB Exh. 18.

<sup>168</sup> Tr. Vol. 15, pp. 3537-50 (Weisensee); CURB Exh. 21 to 23.

<sup>169</sup> Tr. Vol. 15, pp. 3550-56 (Weisensee); CURB Exh. 24.



Commission considers what lawyers of comparable skill and experience practicing in the area in which the litigation occurred would charge for their time.<sup>170</sup>

73. KCP&L has the responsibility to show that the rates it agreed to pay outside attorneys and seeks to include in rate case expense are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.<sup>171</sup> The Commission touched upon this issue in its November 22, 2010 Order, noting the most experienced attorney representing KCP&L from this area was charging \$390 per hour but concluding the record was not adequate to adopt a “fee customarily charged in the locality for similar legal services.”<sup>172</sup> KCP&L questioned this discussion in its Reply to Responses made to its first Petition for Reconsideration,<sup>173</sup> but the Commission did not grant reconsideration on this issue.<sup>174</sup> However, when the Commission later granted reconsideration on the issue of rate case expense, KCP&L was given the opportunity to submit whatever evidence it wanted on this issue.<sup>175</sup> KCP&L has presented evidence discussing the value of services provided by Cafer,<sup>176</sup> Roberts,<sup>177</sup> Caro,<sup>178</sup> and other individual attorneys,<sup>179</sup> but no evidence was presented about the prevailing market rates in this area. Therefore, the Commission must rely upon its own knowledge to establish an appropriate reasonable rate to make a lodestar calculation.

74. Evidence established that Cafer began work on this proceeding charging \$200 an hour, but soon changed her billing rate to \$300 an hour.<sup>180</sup> Many attorney timekeepers were involved at Polsinelli Shughart and at Schiff Hardin; we begin by reviewing the hourly rate for the four primary attorneys at each firm. Invoices from Polsinelli Shughart reflect that the

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<sup>170</sup> *Case*, 157 F.3d at 1256.

<sup>171</sup> *Sheldon*, 237 F. Supp. at 1278.

<sup>172</sup> November 22, 2010, p. 94, *citing Westar Energy*, 235 P.3d at 531.

<sup>173</sup> Reply of KCP&L to Staff’s, CURB’s, and MUUG’s Responses to KCP&L’s Petition for Reconsideration and Clarification, filed December 22, 2011, ¶¶ 79-80.

<sup>174</sup> January 6, 2011 Order, ¶ 74.

<sup>175</sup> February 21, 2011 Order, ¶¶ 15, 21-23, 26-27.

<sup>176</sup> Tr. Vol. 16, pp. 3759-60 (Rush).

<sup>177</sup> Tr. Vol. 16, pp. 3686-88 (Downey); Tr. Vol. 16, pp. 3796-97 (Rush).

<sup>178</sup> Tr. Vol. 16, p. 3797 (Rush).

<sup>179</sup> Tr. Vol. 16, p. 3797 (Rush).

<sup>180</sup> KCP&L Exh. 1, pp. 2-3.

attorneys' hourly rates increased during the course of the proceeding: Caro's per hour rate increased in increments from \$375 to \$390 to \$400; Callenbach increased from \$260 to \$280 to \$300; Kane increased from \$200 to \$215 to \$235; and Hagedorn increased from \$185 to \$200.<sup>181</sup> Schiff Hardin invoices reflect hourly rates for attorneys that are higher than initial rates listed in the Contract for Legal Services, although the rate charged per attorney during this proceeding did not increase. Roberts' initial rate was \$495 per hour, but his rate in this proceeding was \$555 per hour; Okizaki's initial rate was \$350 per hour, but the billed rate was \$450 per hour; Gould's initial rate was \$245 per hour, but the billed rate was \$295 per hour; and an initial rate was not listed for Schermer, who billed at \$330 per hour.<sup>182</sup> Clearly attorney hourly rates in this proceeding vary widely, from \$185 to \$555.<sup>183</sup>

75. The Commission had considered the distribution of hours worked by attorneys reporting hours as timekeepers. Considering the unadjusted billable hours the various attorneys billed to KCP&L, 9.3% fell in the \$500-600 range; 9.3% in the \$400-500 per hour range; 14.8% in the \$350-400 range; 7.3% in the \$300-350 range; 37.0% in the \$250-300 range; 12.4% in the \$200-250 range; and 9.0% under \$200 per hour. Thus, almost 60% of the billed hours fell in the range of \$300 per hour and under. Moreover, of the three law firms being considered for the lodestar calculation, all of the time charged at a rate of over \$400 an hour were for attorneys at Schiff Hardin, for which KCP&L is already recovering more than \$20 million in capital costs for consulting work.

76. The most experienced attorneys from this area for which this Commission has responsibility, and who appear regularly before us, charged rates in the range of \$250 to \$400 per hour with the vast majority of those hours billed at \$300 per hour and less. If the hourly rate of

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<sup>181</sup> Schedule JPW2010-15, pp. 2-5.

<sup>182</sup> KCP&L Exh. 1, p. 145; Schedule JPW2010-15, pp. 2-5.

<sup>183</sup> Because the Commission will not allow recovery for services by attorneys at Morgan Lewis and Duane Morris, we will not consider their hourly rates in determining a reasonable attorney hourly rate. The Commission notes that hourly rates for attorneys at Morgan Lewis were \$540, \$600, \$750, and \$855 per hour. Schedule JPW2010-13, pp. 2-5. The hourly rates for attorneys at Duane Morris were \$210, \$215, \$430, \$480, and \$575 per hour. Schedule JPW2010-12, pp. 2-6.

\$300 is used, multiplying the reasonable number of attorney hours of 7,909 by \$300 results in a lodestar calculation of \$2,372,700. If the hourly rate of \$285 is used, multiplying the 7,909 reasonable attorney hours by \$285 results in a lodestar calculation of \$2,254,065. If the hourly rate of \$275 is used, multiplying the 7,909 reasonable attorney hours by \$275 results in a lodestar calculation of \$2,174,975. Having reviewed the record as a whole, the Commission finds these lodestar calculations using an hourly rate of \$275 to \$300 provides a range of appropriate attorney fees to consider in determining just and reasonable rate case expense for this proceeding. KCP&L is already recovering a sizeable amount for Schiff Hardin's work as a consultant, which supports our decision to give less weight to Schiff Hardin's hourly billing rates in determining a reasonable attorney hourly rate for the lodestar calculation for this proceeding. In considering and weighing various factors to reach a decision on rate case expense, the Commission has given significant weight to the lodestar calculation to determine a just and reasonable amount to include in rate case expense for attorney fees that is appropriate to recover from KCP&L's employees. The Commission now turns its analysis to rate case expense for non-attorney consultants.

#### **V. Determining Rate Case Expense for Non-attorney Consultants**

77. Billings by consultants present issues similar to the law firm billings. Invoices were inconsistent in their detail and it was impossible to determine the degree to which work effort was properly undertaken, duplication of work effort occurred, and any effort was made to review and manage billings by consultants. In total, eight outside consulting firms (excluding consultants hired by outside law firms and included in billings of those firms) with a total of 46 individual timekeepers billed more than 9,700 hours to this proceeding for a total of \$1,806,785.<sup>184</sup> At a high level, the Commission used a lodestar analysis that adjusted an appropriate amount of attorney charges from the requested \$5,141,986 to \$2,372,700 (using \$300/hour), \$2,254,065 (using \$285/hour) and \$2,174,975 (using \$275/hour), or a reduction of approximately 58%, 56.2%, and 53.8%. Thus, using these percentages, the range of allowed

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<sup>184</sup> Attachment A, pp. 3-4.

expenses for legal and consulting services would range from \$2.92 million at \$275 per hour to \$3.21 million at \$300 per hour.

#### **A. Billings by Consultants Generally**

78. In its November 22, 2010 Order, the Commission found billings by several outside consultants were appropriate to include in rate case expense.<sup>185</sup> During this proceeding, questions have been raised regarding fees for some of these outside consultants. We address those concerns in discussing individual consultants. As with all rate case expense, we evaluate consultants' expenses to determine whether the expense was prudently incurred and is a just and reasonable amount that is appropriate to recover from KCP&L's ratepayers.

79. Black & Veatch: Black & Veatch Corporation addressed issues related to jurisdictional allocations in terms of client and operations expenses and with an emphasis on an off-system, sales-margin allocator to examine the proper way to allocate between Missouri and Kansas.<sup>186</sup> KCP&L Witness Loos, Director of Black & Veatch's Enterprise Management Solutions Division, submitted prefiled direct and rebuttal testimony and testified as a witness at the 2010 Evidentiary Hearing.<sup>187</sup> The bills from Black & Veatch show four timekeepers reported 398 hours and a total expense of \$67,865.<sup>188</sup> During the hearing, Weisensee testified that Black & Veatch had been working with KCP&L before this docket and the Company believed it efficient and effective to continue using that firm rather than going through a Request for Proposal (RFP) process.<sup>189</sup> CURB expressed concern that Black & Veatch billings did not include detailed descriptions of hourly work. But we note the Consulting Services Agreement defined the work to be performed in detail.<sup>190</sup> Although the Commission did not accept the allocator proposed by

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<sup>185</sup> November 22, 2010 Order, p. 91.

<sup>186</sup> Tr. Vol. 17, pp. 3961-62 (Weisensee).

<sup>187</sup> Rush Direct, pp. 39-45. See November 22, 2010 Order, pp. 125-28.

<sup>188</sup> Weisensee Direct, p. Schedules JPW2010-10 and JPW2010-17. Tr. Vol. 15, p. 3379. The total expense billed was \$67,864.72, which we round up to \$67,865. JPW2010-17.

<sup>189</sup> Tr. Vol. 17, pp. 4045-46 (Weisensee).

<sup>190</sup> Tr. Vol. 15, pp. 3509-10 (Weisensee); CURB Exh. 9; KCP&L Exh. 1, pp. 1-2.

Loos, we conclude the decision to retain Black & Veatch was prudent and the amount asked to be included in rate case expense is just and reasonable.

80. FINANCO, Inc.: KCP&L retained Financial Analysts Consultants, Inc. (FINANCO), to address return on equity (ROE) as well as KCP&L's requested capital structure and overall rate of return. The principal contact was Dr. Samuel C. Hadaway, who submitted prefiled direct and rebuttal testimony and testified at the hearing.<sup>191</sup> In its November 22, 2010 Order, the Commission considered Hadaway's proposal in discussing capital issues, although it did not adopt his testimony.<sup>192</sup> The Executed Engagement Letter between Great Plains Energy and FINANCO was dated October 19, 2005, but the billing rates for timekeepers were updated in an undated sheet attached to the initial Letter.<sup>193</sup> Two timekeepers billed a total of \$79,875, which KCP&L seeks to recover in rate case expense.<sup>194</sup> Bill Baldry questioned hours spent on rebuttal testimony and identified errors in billings submitted by FINANCO.<sup>195</sup> In response, Weisensee testified that these were coding errors and that these expenses were properly billed to and included in this proceeding.<sup>196</sup> We conclude the decision to retain FINANCO was prudent and the amount sought to be included in rate case expense is just and reasonable.

81. Gannett Fleming, Inc.: KCP&L retained Gannett Fleming, Inc. to develop and sponsor the depreciation study that was filed with its Application. The primary contact was John G. Spanos, Vice President of the Valuation and Rate Division. Spanos conducts depreciation, valuation and original cost studies, determines service life and salvage estimates, conducts field reviews, and presents recommended depreciation rates to clients and before regulatory agencies.<sup>197</sup> In addressing depreciation issues in its November 22, 2010 Order, the Commission reviewed Spanos' depreciation study and discussed his proposals in detail. We adopted Spanos'

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<sup>191</sup> Rush Direct, pp. 28-33.

<sup>192</sup> November 22, 2010 Order, pp. 37-44.

<sup>193</sup> KCP&L Exh. 1, pp. 11-16.

<sup>194</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-18. The total expense billed was \$79,874.18, which we round up to \$79,875. Weisensee Direct, Schedule JPW2010-18.

<sup>195</sup> Baldry Direct, pp. 6-7, 10-11.

<sup>196</sup> Weisensee Rebuttal, p. 3; Tr. Vol. 17, p. 3968 (Weisensee).

<sup>197</sup> Rush Direct, pp. 45-49.

depreciation study except to the extent we approved proposals by Staff Witness Dunkel modifying components of the Spanos study.<sup>198</sup> A Statement of Work set out the agreement between Great Plains Energy Services, Inc. and Gannett Fleming, Inc. regarding the depreciation studies.<sup>199</sup> KCP&L seeks to recover the cost of the depreciated study allocated to this rate case, which totals \$44,347.<sup>200</sup> The Commission concludes the decision to retain Gannett Fleming was prudent and the amount requested to be included in rate case expense is just and reasonable.

82. Management Applications Consulting, Inc. (MAC): This vendor was retained to develop the account class cost of service (CCOS) that KCP&L was required to file under the 04-1025 S&A to provide the rate of return results at existing revenue levels for the Kansas jurisdictional customer CCOS study for KCP&L's electric business.<sup>201</sup> KCP&L asked to include the entire amount billed by Management Applications Consulting (MAC) of \$111,242 in rate case expense.<sup>202</sup> During the hearing, CURB questioned Weisensee about the lack of description for tasks performed in invoices submitted by this vendor. Weisensee explained this vendor only performed the class cost of service study and all work recorded by timekeepers with MAC addressed this issue.<sup>203</sup> Normand's CCOS study was submitted with the Company's Application, and Normand testified during the 2010 Evidentiary Hearing. Rush pointed out that the Commission ultimately adopted Normand's CCOS study and used it as a basis for determining rate design for KCP&L.<sup>204</sup>

83. The Commission shares CURB's concern that Normand and other timekeepers with MAC did not provide detailed descriptions of the work performed. The Master Agreement for Professional Services between Great Plains Energy Service, Inc. and MAC describes in detail the professional services that will be provided and attaches updates to the original Agreement

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<sup>198</sup> November 22, 2010 Order, pp. 60-75.

<sup>199</sup> KCP&L Exh. 1, pp. 17-24.

<sup>200</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-19.

<sup>201</sup> Rush Direct, pp. 33-39.

<sup>202</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-20.

<sup>203</sup> Tr. Vol. 15, pp. 3501-0, Vol. 17, p. 4032; CURB Exh. 9.

<sup>204</sup> Rush Direct, p. 35.

executed in April of 2008.<sup>205</sup> Work Order No. 3 specifically addresses the CCOS study to be prepared for this rate case, sets out objectives to be completed by MAC, lists the consultants and their assigned tasks, and provides a Milestones and Delivery schedule to be performed.<sup>206</sup> Attachment A to Work Order No. 3 contains a list of billing rates by classification of the timekeepers.<sup>207</sup> The Commission concludes that the decision to retain MAC to perform the CCOS study was prudent. Even though the Master Agreement was very detailed, the Commission finds lack of detail in invoices problematic in reviewing these expenses submitted for recovery as rate case expense. The Commission concludes invoices submitted by MAC do not adequately describe the work performed by the timekeepers and finds it just and reasonable to reduce the expenses submitted for MAC of \$111,242 by 10%, or \$11,124. The reduced amount of \$100,118 is just and reasonable to include as rate case expense.

84. Siemens Energy, Inc.: A line loss study is used to quantify the losses that result from operating the electric system and to associate those losses to the customer classes responsible for those losses. Siemens Energy performed a comprehensive Electric Loss Study for the KCP&L system in 2006 and updated that Study considering operation of the new 850 MW Iatan 2 generating unit.<sup>208</sup> This was the only line loss study conducted for this rate case and was used by other parties to normalize revenues. The expenses for this study were split between four jurisdictions, resulting in an expense for this case of \$20,027.<sup>209</sup> The Commission concludes the decision to retain Siemens Energy was prudent and the amount asked be included in rate case expense is just and reasonable.

85. Towers Watson: KCP&L retained Towers Watson to rebut direct testimony by Staff Witness Hull regarding pension-related matters, including a recommendation to disallow the

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<sup>205</sup> KCP&L Exh. 1, pp. 32-58.

<sup>206</sup> KCP&L Exh. 1, pp. 51-57.

<sup>207</sup> KCP&L Exh. 1, p. 58.

<sup>208</sup> Rush Direct, pp. 117-18.

<sup>209</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-23. Invoices for Siemens Energy totaled \$80,105.00, of which 25% was assigned to this docket. That amount, \$20,026.25, was rounded up to \$20,027. Schedule JPW2010-23.

pension cost adjustment proposed by KCP&L relating to St. Joseph Light & Power Company. KCP&L worked primarily with C. Kenneth Vogl, a consulting actuary with substantial technical and consulting experience on employee benefit plans.<sup>210</sup> Vogl submitted prefiled rebuttal testimony and testified during the 2010 Evidentiary Hearing. The Commission examined Vogl's criticism of Staff's recommendations but did not adopt Vogl's position.<sup>211</sup> KCP&L seeks to recover in rate case expense the entire amount billed for Tower Watson of \$19,964.<sup>212</sup> The Commission concludes the decision to retain Towers Watson was prudent and the expense requested be included in rate case expense is just and reasonable.

### **B. Consultants Hired to Address Prudence**

86. Numerous KCP&L witnesses submitting testimony related to prudence regarding the Iatan Project covered all aspects of prudence, including balance of plant and cost controls.<sup>213</sup> As discussed above in addressing duplication of work by attorneys,<sup>214</sup> KCP&L management claimed it needed to "ramp up" its efforts to address prudence after Drabinski filed testimony regarding prudence with respect to the Iatan 2 unit that, according to KCP&L, used a different approach than in the 09-246 Docket with respect to the Iatan 1 Unit. Rush testified that over 70%, or approximately \$5.5 million, of the \$7.7 million KCP&L-only rate case expense was incurred to address the prudence issue.<sup>215</sup> Rush justified this amount as needed to analyze whether management of the Iatan project was prudent under K.S.A. 66-128g, including briefing of Kansas precedent and decisions on prudence nationally.<sup>216</sup> Rush also cited Drabinski's testimony to support retention of numerous experts. Downey described this as a "bet the company" case with a \$2 billion price tag, which suggests to us why KCP&L placed no restraint

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<sup>210</sup> Rush Direct, pp. 89-93; Tr. Vol. 16, p. 3824.

<sup>211</sup> November 22, 2010 Order, pp. 55-58.

<sup>212</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-25. The amount billed totaled \$19,963.53, which we have rounded up to \$19,964. Schedule JPW2010-25.

<sup>213</sup> Rush Direct, p. 10; Tr. Vol. 16, p. 3752 (Rush).

<sup>214</sup> *Infra*, ¶ 63.

<sup>215</sup> Rush Direct, pp. 11-12.

<sup>216</sup> Rush Direct, pp. 5-6, 9-11.



on the effort to address prudence.<sup>217</sup> While management may decide to “bet the company” in response to what it perceives to be a significant threat to the goodwill and reputation of the company, the Commission will not allow recovery of this bet in rate case expense unless the utility meets its burden to show such expenses were prudently incurred, are just and reasonable, and are appropriate to recover from ratepayers. The consultants discussed next were engaged to address prudence.

### **1. Pegasus Global Holdings, Inc.**

87. Pegasus Global Holdings, Inc. (Pegasus), and specifically Dr. Kris R. Nielsen, was initially hired by KCP&L to audit the Iatan Project independent from KCP&L’s fact witnesses. Nielsen submitted testimony in the 09-246 Docket that was adopted into the record in this docket because prudence issues regarding Iatan Unit 1 were deferred from the 09-246 Docket to this rate case.<sup>218</sup> KCP&L asserted Pegasus was further retained to perform an independent audit for this rate case to examine whether KCP&L made reasonable and prudent decisions with regard to Iatan Unit 2. Nielsen also read, analyzed, and compared findings of Drabinski with findings by Pegasus regarding prudence issues. Nielsen submitted direct and rebuttal testimony and testified at the 2010 Evidentiary Hearing.<sup>219</sup>

88. The expenses for Pegasus that KCP&L seeks to recover in rate case expense total \$1,070,480; with the exception of Schiff Hardin, this is the largest amount KCP&L requests for an expert consultant.<sup>220</sup> The Consulting Agreement was executed between Duane Morris and Pegasus on August 19, 2008, “to provide professional consulting services to Duane Morris to assist Duane Morris in giving legal advice to KCP&L with respect to the rate proceedings under the terms and conditions hereinafter set forth.”<sup>221</sup> Duane Morris paid Pegasus for its services.<sup>222</sup>

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<sup>217</sup> Tr. Vol. 16, pp. 3667, 3700. See KCP&L Posthearing Brief, p. 10, n. 31.

<sup>218</sup> Rush Direct, pp. 82-89.

<sup>219</sup> November 22, 2010 Order, pp. 11-33.

<sup>220</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-22. The total amount requested is \$1,070,479.35, which is rounded up to \$1,070,480. Schedule JPW2010-22.

<sup>221</sup> KCP&L Exh. 1, p. 128.

Rates for professional services were listed in an attached Hourly Fee Schedule dated February 1, 2008, which matched the rates charged in this proceeding.<sup>223</sup>

89. The Commission notes Pegasus spent almost 1,300 hours and incurred expenses of over \$360,000 before KCP&L's Application was filed in December 2009; an additional 375 hours and more than \$105,000 was billed during the period of discovery before Drabinski's testimony was filed. During the two months after filing Drabinski's testimony, June and July 2010, Pegasus billed over 1,400 hours and more than \$361,000 – whether in aid of the analysis of Drabinski's testimony or in preparation of rebuttal cannot be determined from the record. For the month of the 2010 Evidentiary Hearing, August 2010, Pegasus billed 622 hours and over \$180,000.<sup>224</sup> The Commission concludes hiring Pegasus to conduct an independent study was prudent, but the work performed and billed after completing this independent study far exceeded the amount of work that a consultant of Neilson's purported stature and experience would be expected to incur to review Drabinski's testimony, analyze Drabinski's analysis, and compare the results of these two studies. Still, had Pegasus been the only prudence consultant hired to do this analysis, these expenses might be considered reasonable. But KCP&L management did not rely only upon the expertise of Pegasus to respond to Drabinski.

## **2. Daniel Meyer of Meyer Construction Consulting, Inc.**

90. Schiff Hardin was engaged by KCP&L to provide both consulting and legal advice to KCP&L regarding the Iatan Project. As part of its role in monitoring the Resource Plan's progress and costs, Schiff Hardin retained Daniel Meyer of Meyer Construction Consulting, Inc. According to Rush, Meyer's direct testimony analyzed the Control Budget Estimate, cost re-forecasts, external reporting mechanisms, and the Balance of Plant contracting methodology; in rebuttal testimony, Meyer focused on some issues discussed by Drabinski, such as Iatan Unit 2

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<sup>222</sup> KCP&L Exh. 1, p. 129. We note Charles W. Whitney was designated as Duane Morris' authorized representative and was not replaced even though Whitney was not with that firm after July 2009.

<sup>223</sup> KCP&L Exh. 1, pp. 128 and 136; Weisensee Direct, Schedule JPW2010-22.

<sup>224</sup> Summary of Hourly Fees, Attachment A, p. 3.

Project costs, the Project Definition Report and cost re-forecasts, and specific contracts, purchase orders, change orders, and other cost drivers.<sup>225</sup> Schiff Hardin, not KCP&L, retained Meyer as stated in the Contract for Legal Services Agreement and Attachment A entered into between KCP&L and Schiff Hardin.<sup>226</sup> Meyer's hourly rate was listed as \$395 an hour, but Meyer billed \$450 an hour.<sup>227</sup> KCP&L seeks to recover \$488,328 in rate case expense for Meyer.<sup>228</sup>

91. Meyer's expenses were not billed to KCP&L but are contained in a list of "CLIENT DISBURSEMENTS/CHARGES" in Schiff Hardin invoices. For example, Schiff Hardin Invoice #1524871, dated October 19, 2010, lists three items as "Professional Services – Vendor: MEYER" under the date 9/24/10; together these items total \$472,016.<sup>229</sup> These three billings from Meyer are attached to this Schiff Hardin invoice, giving the date work was performed, the number of hours worked each day; descriptions of work performed are very limited. In the billing for June 2010, Meyer billed as follows: approximately 56 hours for "work on various Kansas Unit 2 rate case cost issues & response to Vantage [i.e. Drabinski] report"; 13.35 hours on June 30, 2010, to "attend CCA meeting @ SH office"; 12.25 hours for "Work on Kansas Unit 2 rate case issues; meet @ SH office on same"; no description is given for work performed by associates, for which Meyer bills \$77,025.<sup>230</sup> Similarly, Meyer's billing for July 2010 included 39.5 hours to attend two CCA sessions, one on July 1, and the other on July 13 and 14; the description for the remaining 195.5 hours billed in July 2010 is "Work on various Kansas Unit 2 rate case cost issues & response to Vantage Report"; no description is given at all for associate billing that totals over \$76,000.<sup>231</sup> During August 2010, Meyer billed 231 hours to prepare for

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<sup>225</sup> Rush Direct, pp. 57-65.

<sup>226</sup> KCP&L Exh. 1, pp. 145, 148.

<sup>227</sup> KCP&L Exh. 1, p. 145; Weisensee Direct, Schedule 2010JPW-15, p. 20. Tr. Vol. 15, p. 3485 (Meyer hourly rate is \$450).

<sup>228</sup> Weisensee Direct, Schedule JPW2010-15, pp. 1, 20.

<sup>229</sup> KCP&L Exh. 2 (CD Rom), Schiff-Services\_June\_1\_2010\_to\_September\_30\_2010.pdf, pp. 1, 12, 19-24. See CURB Exh. 3, (Meyer billings for June, July, August and September 2010).

<sup>230</sup> KCP&L Exh. 2 (CD Rom), Schiff-Services\_June\_1\_2010\_to\_September\_30\_2010.pdf, pp. 24. See CURB Exh. 3, p. 6 (Meyer billing for June 2010). Tr. Vol. 15, pp. 3488-89 (Weisensee).

<sup>231</sup> KCP&L Exh. 2 (CD Rom), Schiff-Services\_June\_1\_2010\_to\_September\_30\_2010.pdf, p. 22. See CURB Exh. 3, p. 4 (Meyer billing for July 2010). Tr. Vol. 15, pp. 3487-88 (Weisensee).

and attend the 2010 Evidentiary Hearing, which totaled \$103,950; the billing for associates this month was 407.50 hours and totaled over \$67,000, with no itemized description of work.<sup>232</sup> CURB Witness Smith reviewed Meyer's billing and recognized he submitted testimony and testified at the hearing, but Smith found Meyer's billing suggested not much cost containment was occurring.<sup>233</sup>

92. The Commission questions whether KCP&L acted prudently in approving Schiff Hardin's hiring to Meyer Construction to work on the issue of prudence. Allowing Schiff Hardin to hire an important consultant on prudence obscured our ability to review the work performed to determine if the Company was prudent in contracting for this consultant's services and to decide whether this expense is just and reasonable and is appropriate to recover from ratepayers. In light of all the other rate case expense requested for consultants regarding prudence, and having taking into account the entire record in this proceeding, the Commission finds the evidence regarding expenses for Meyer do not support a finding that retaining this consultant was prudent or that these expenses are just and reasonable.

### **3. J. Wilson & Associates**

93. Schiff Hardin also contracted with J. Wilson & Associates, specifically with Jim Wilson, who worked for five years on project controls for the infrastructure projects at the Iatan site. Jim Wilson collected information about the Iatan Project and provided it to Meyer, who relied upon this information in performing his analysis.<sup>234</sup> Schiff Hardin's Contract for Legal Services with KCP&L listed J. Wilson & Associates as a third-party consultant, with Jim Wilson listed at \$250 per hour and another timekeeper at \$160 per hour; Wilson's billings charged \$300 per hour.<sup>235</sup> KCP&L seeks to recover in rate case expense the amount Schiff Hardin billings show for the amount billed by Wilson of \$119,375.<sup>236</sup>

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<sup>232</sup> CURB Exh. 3, p. 2; Tr. Vol. 16, pp. 3281-85 (Weisensee).

<sup>233</sup> Tr. Vol. 16, p. 3605 (Smith).

<sup>234</sup> Rush Direct, p. 59; Tr. Vol. 15, p. 3792 (Rush).

<sup>235</sup> KCP&L Exh. 1, p. 145; Tr. Vol. 16, p. 3639.

<sup>236</sup> Weisensee Direct, Schedule JPW2010-15, pp. 1, 14.

94. The evidence does not establish why Schiff Hardin, with all its resources as a consulting firm, needed to retain services of J. Wilson to assist Meyer. The amount KCP&L seeks to recover in rate case expense for Meyer and Wilson exceeds \$600,000. We note that during the months of June through August 2010, Meyer incurred over \$400,000 and Wilson over \$100,000. During these same three months, Pegasus incurred over \$541,000. Yet no adjustment was made for the work of these consultants assigned to prudence. We do not include expenses for Wilson in rate case expense.

#### **4. Steven Jones Retained by Schiff Hardin**

95. Schiff Hardin invoices also include expenses for subcontractor Steven Jones, who testified about processes and procedures for procurement of equipment and the use of Kiewit for the Balance of Plant work. Rush stated that Jones “is uniquely qualified to testify as to these issues, as from March 16, 2006 through April 2009, he was the Director of Procurement for KCP&L.”<sup>237</sup> Apparently Jones handled all procurement activities for KCP&L’s Resource Plan as well as for the commercial management and administration of the Iatan project contracts and the material management and distribution for the Iatan project. At some point, Jones became a subcontractor through Schiff Hardin rather than a contractor with KCP&L. Here, KCP&L seeks to recover through rate case expense a total of \$188,795 for Jones, as listed in Client Disbursements and Charges in Schiff Hardin invoices.<sup>238</sup> The Commission’s obvious concern, not addressed in the evidence, is why Jones was retained by Schiff Hardin as a consultant rather than continuing his relationship directly with KPC&L. CURB Witness Smith expressed concern that Jones’ fees were not contained.<sup>239</sup> The record does not state Jones’ hourly rate when he worked as a contractor directly with KPC&L or explain why he became a consultant for Schiff Hardin. We find KCP&L has not provided sufficient evidence to find it just and reasonable to include expenses for Wilson in rate case expense.

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<sup>237</sup> Rush Direct, pp. 65-67; Tr. Vol. 15, p. 3794 (Rush); Tr. Vol. 17, p. 4012 (Weisensee).

<sup>238</sup> Weisensee Direct, Schedule JPW2010-15, pp. 1, 17; Summary of Hours, Attachment A, p. 3;

<sup>239</sup> Tr. Vol. 16, p. 3606 (Smith).

## 5. Schiff Hardin as consultants on prudence.

96. The Schiff Hardin law and consulting firm has presented troubling issues in determining an appropriate rate case expense in this docket.<sup>240</sup> Schiff Hardin was a key consultant in managing construction of Iatan 2,<sup>241</sup> but KCP&L also claims the firm provided legal services totaling \$2,852,109.83 that should be included in rate case expense.<sup>242</sup> This amount is in addition to approximately \$20 million Schiff Hardin was paid for consulting on Iatan 2 that KCP&L is already recovering through capitalized costs for the Iatan project that are included in the revenue requirement to be recovered from ratepayers over the life of the Iatan project, with carrying costs.<sup>243</sup>

97. The Commission notes that in its dual role as attorney and consultant, Schiff Hardin asserted attorney/client privilege for quarterly reports to KCP&L management about construction of Iatan 2. Those Reports were not only treated as Confidential during the 2010 Evidentiary Hearing, but also were claimed protected by the attorney/client privilege, which prevented other parties and the Commission from reading them.<sup>244</sup> The Commission cannot assess the reasonableness of the work done by Schiff Hardin if its consulting work is shielded from the Commission's review through KCP&L's assertion of a confidential attorney-client communication.<sup>245</sup> Although none of the parties objected to KCP&L's assertion of the attorney-client privilege during the 2010 Evidentiary Hearing, given KCP&L's lax or non-existent management of its legal expenses, the Commission questions whether Schiff Hardin's work was properly protected as confidential attorney-client privileged communications. The line between legal and consulting work is not clear in this proceeding.

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<sup>240</sup> November 22, 2010 Order, p. 94.

<sup>241</sup> Tr. Vol. 4, pp. 934-37 (Downey).

<sup>242</sup> Weisensee Direct, Schedule JPW2010-15.

<sup>243</sup> Tr. Vol. 16, p. 3744 (Rush) (KCP&L paid Schiff Hardin in excess of \$20 million as an expert non-legal consultant on the Resource Plan); Crane Direct, p. 15.

<sup>244</sup> Tr. Vol. 5, pp. 952-59 (Downey); Exhibits 60-63 (Confidential Status Reports by Schiff Hardin).

<sup>245</sup> Tr. Vol. 16, p. 3795 (Wright) ("We have no way sitting [] here to know what exactly is done by Schiff Hardin the lawyers as opposed to Schiff Hardin the consultants.").

98. Downey testified the work by Kenneth Roberts and his team was important in assisting him with building the project, challenging KCP&L's internal management team to recognize the importance of reporting requirements relating to the Iatan 2 Project, and ultimately communicating all elements of the effort to construct the Iatan 2 Project to both the Missouri and Kansas commissions.<sup>246</sup> But Downey stated KCP&L leadership managed the project, not Schiff Hardin, noting the Executive Oversight Committee reviewed Schiff Hardin's reports monthly.<sup>247</sup> Downey described Schiff Hardin as "an aid to us in managing a very huge, complex project that involves many skills that we don't normally wrestle with during the normal course of . . . the ongoing electric utility business."<sup>248</sup> Yet Downey could not identify any evidence to show anyone in KCP&L management questioned or scrutinized Schiff Hardin invoices even though these invoices reflect continuous duplication of effort by Roberts and the rest of his legal team.<sup>249</sup>

99. We note the Contract for Legal Services, dated January 17, 2007, listed five law firm timekeepers with individual hourly rates and four additional consultant timekeepers with individual hourly rates.<sup>250</sup> But Schiff Hardin billings include invoices for 13 law-firm timekeepers and additional consultants. The record contains no evidence that KCP&L ever approved Schiff Hardin's use of an additional law firm timekeepers or consultants even though the Contract for Legal Services states, "All fees and costs are subject to annual adjustments, which must be supplied to and approved by KCP&L's General Counsel at least 30 days prior to the effective date of any such adjustments."<sup>251</sup> Rush asserted that "every attorney that we utilized is somewhere below the mean paid for attorney fees throughout the regions that they are representing,"<sup>252</sup> although nothing in the evidence confirms his opinion.

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<sup>246</sup> Tr. Vol. 16, pp. 3687-88.

<sup>247</sup> Tr. Vol. 16, p. 3678 (Downey).

<sup>248</sup> Tr. Vol. 16, p. 3677 (Downey).

<sup>249</sup> Tr. Vol. 15, pp. 3527 (Weisensee) and CURB Exh. 16 and 17 (Schiff Hardin vouchers drafting and redrafting testimony of witnesses).

<sup>250</sup> KCP&L Exh. 1, pp. 143, 145.

<sup>251</sup> KCP&L Exh. 1, pp. 145-46.

<sup>252</sup> Tr. Vol. 16, p. 3739 (Rush).

100. The evidence does not show review or approval for Schiff Hardin to use additional unlisted timekeepers, and does not show KCP&L's General Counsel approved any adjustment in hourly rates or costs for Schiff Hardin even though the contract clearly required him to approve "annual adjustments" at least 30 days before the effective date of any adjustment.<sup>253</sup> The Commission concludes that the Company was inattentive in reviewing Schiff Hardin billings and that KCP&L has not met its burden to establish detail needed to find the total amount requested for Schiff Hardin in rate case expense is just and reasonable.

101. The Commission finds Roberts and his team have already been well paid for work consulting on Iatan, and KCP&L has already been allowed to recover more than \$20 million as costs for Schiff Hardin in rates. Also, the Commission has allowed hours to be included for work by additional Schiff Hardin attorneys, who were brought into this proceeding without approval by KCP&L's general counsel. The Commission concludes our decision on rate case expense, which relies significantly on the lodestar calculation, includes appropriate compensation to KCP&L for the legal work in this rate case proceeding, including that provided by Schiff Hardin and other prudence consultants.

### **C. NextSource and Use of Retired KCP&L Employees**

102. KCP&L asked that \$415,981 be included in rate case expense for NextSource, Inc., which is a consultant and temporary employee resource provided by this staff services company for a variety of business operations functions.<sup>254</sup> This included services of two former KCP&L employees, Chris Giles (billings total \$272,625) and Chris Davidson (billings total \$93,630), and one current KCP&L employee, Forest Archibald (billings total \$11,900).<sup>255</sup>

103. Giles was formerly KCP&L's Vice President, Regulatory Affairs, but retired in 2009. Rush stated that Giles was instrumental in developing and implementing the Regulatory Plan and that Giles retired from KCP&L "to specifically enter the regulated utility consulting

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<sup>253</sup> KCP&L Exh. 1, pp. 145-46.

<sup>254</sup> Weisensee Direct, Schedule JPW2010-10; Tr. Vol. 15, 3413-22 (Weisensee).

<sup>255</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-21, pp. 1, 5-8, 13-14.



field.”<sup>256</sup> The Commission notes the remarkable timing of Giles’ retirement that afforded him an opportunity to consult on this proceeding. Davidson also retired from KCP&L and continued working on the same issues regarding the Resource Plan. She was supervised by Weisensee, who was the responsible party directing and reviewing Davidson and even encouraged NextSource to provide a raise for her work on the Resource Plan.<sup>257</sup>

104. The Commission is troubled by KCP&L’s hiring of retired employees rather than hiring and training replacement employees but recognizes the ongoing nature of the Resource Plan shows why former employees might be useful as witnesses in specific instances. Overall, the Commission finds KCP&L failed to present evidence sufficient to show why such extensive use of NextSource was necessary and essential to presenting its case in this proceeding. We have taken this into account in setting the rate case expense in this proceeding.

#### **D. Other Vendors Providing Services**

105. Weisensee noted that, in preparing for and managing a case of this complexity, KCP&L needed to use outside vendors to provide ancillary services. KCP&L used the advertising agency Kuhn & Wittenborn, Inc. to purchase the schedule of newspaper advertisements the Commission required be used to notify KCP&L’s Kansas customers about the public hearings scheduled for this proceeding. KCP&L asks the Commission to include as rate case expense \$33,366 for services provided by Kuhn & Wittenborn.<sup>258</sup>

106. Other ancillary vendors included (1) XACT Data Discovery that provided printing service for the Application, minimum filing requirements and filed testimony, for which KCP&L seeks to recover \$57,724 in rate case expense<sup>259</sup>; (2) XPEDX that provided supplies for document services for filings, for which KCP&L seeks to recover \$7,778 in rate case expense<sup>260</sup>; and(3) lodging expenses for KCP&L representatives to stay at the Hampton Inn in Topeka, Kansas,

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<sup>256</sup> Rush Direct, pp. 50-57; Tr. Vol. 16, p. 3752 (Rush).

<sup>257</sup> Tr. Vol. 15, pp. 3421-27 (Weisensee).

<sup>258</sup> Weisensee Direct, p. 122 and Schedules JPW2010-10 and JPW2010-27.

<sup>259</sup> Weisensee Direct, p. 122 and Schedules JPW2010-10 and JPW 2010-28.

<sup>260</sup> Weisensee Direct, p. 122 and Schedules JPW2010-10 and JPW 2010-29.

during the 2010 Evidentiary Hearing, for which KPC&L seeks to include \$36,058 in rate case expense.<sup>261</sup>

107. In the November 22, 2010 Order, the Commission listed Kuhn & Wittenborn and Excellence (Copying) with other outside vendors that provided helpful information for this proceeding and for which costs were found to be prudent and just and reasonable without duplicating work of others. Regarding housing of attorneys, consultants, and KCP&L employees in the November 22, 2010 Order, the Commission found this expense was high considering the Company's proximity to the Commission's office and concluded shareholders should have some responsibility for paying housing costs.<sup>262</sup>

108. Overall the expense for these four Other Vendor Services totals \$134,925. In addition, KCP&L seeks recovery for (1) "Miscellaneous vendors" that each individually billed less than \$5,000 in the amount of \$7,549 and (2) "Expense Reports" that KCP&L employees reported for meals, lodging, mileage, etc., in the amount of \$25,327; these two sets of expenses total \$32,876. These amounts do not begin to cover miscellaneous expenses billed by outside attorneys and consultants for meals, lodging, travel, mileage, etc. The amount for such expenses for Polsinelli Shughart was \$26,267<sup>263</sup> and for Cafer Law was \$52,154, which included \$49,353 for the transcript of the 2010 Evidentiary Hearing.<sup>264</sup> Such expenses for Schiff Hardin were over \$100,000.<sup>265</sup> We have not evaluated the cost of each flight taken by an attorney or consultant, each meal eaten, each night in a hotel or other such minutia, nor do we believe this necessary. The overall expenses KCP&L has incurred through hiring many outside consultants and attorneys resulted in an unusually large amount it has asked to be included as part of rate case expense. In reaching our decision on rate case expense, we took into account the total miscellaneous expenses KCP&L asked to be reimbursed by ratepayers. We find that the total amount of expenses

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<sup>261</sup> Weisensee Direct, p. 122 and Schedules JPW2010-10 and JPW2010-26.

<sup>262</sup> November 22, 2010 Order, p. 91.

<sup>263</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-14, pp. 1, 16.

<sup>264</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-11, pp. 1, 3.

<sup>265</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-15, pp. 1, 22.

requested is excessive based upon the evidence presented and that it is appropriate for KCP&L shareholders to bear the costs of such expenses not covered by the rate case expense we award.

#### **VI. Further Considerations for Rate Case Expense in This Proceeding**

109. Issues arose during this proceeding that the Commission will address in light of evidence in the record. The Commission has found that, based on its review of evidence in the record as a whole, KCP&L management did not act prudently and carefully and was inattentive in reviewing and monitoring the expense incurred for attorney fees and for consultants in pursuing this rate case. In fact, KCP&L management allowed an exorbitant amount of rate case expense, particularly attorney fees, to be incurred in this proceeding and then asked that ratepayers pay this entire expense. The process KCP&L used to oversee and monitor rate case expense as it was incurred by attorneys and consultants did not coordinate the work of attorneys in the various firms, which resulted in extensive duplication of effort. No effort was made to limit the number of hours expended by attorneys. KCP&L management may decide to incur extraordinary expenses to defend criticism by other parties in a rate case, and without regard to the cost, but it is inappropriate for ratepayers to bear 100% of such costs in rate case expense. The Company has the burden to show the amount requested as rate case expense is both prudently incurred and to support the portion passed through to ratepayers as a just and reasonable expense.

##### **A. KCP&L's Process Used to Monitor Rate Case Expense.**

110. The Commission examines the procedure KCP&L management purportedly put in place to monitor use of attorneys and consultants. The Commission knows that KCP&L employed a very detailed reporting process to ensure its management was informed regarding project construction and management, including receiving data weekly that allowed management to monitor compliance with the budget for the Iatan construction project. KCP&L also developed a detailed, formal protocol to coordinate and assign responsibility for work among the various contractors involved in the Iatan construction project, and documented efforts undertaken to construct Iatan Unit 2 and comply with other requirements under KCP&L's comprehensive

Resource Plan.<sup>266</sup> Yet, a similar monitoring process was not used for rate case expense. While KCP&L set a budget for its construction activities associated with Iatan, no budget or expenditure limits were adopted for the rate case expense associated with this phase of the Iatan project for either consultants or attorneys.<sup>267</sup> No formal protocol coordinated efforts and resources of outside law firms and consultants. No process was used to watch for duplication of work or overlapping services. No incentive was present for KCP&L management to demand granularity regarding rate case expense or to control costs that would eventually be sought through rate case expense.<sup>268</sup> The evidence indicates KCP&L management either had no review process for rate case expense or developed a review process for rate case expense that was completely inadequate.

111. Weisensee, a manager in KCP&L's Regulatory Affairs Department, was primarily responsible for the revenue requirement issue in this rate case.<sup>269</sup> He testified a regulatory asset account was set up to defer rate case costs in April 2009. Project and activity identification numbers (IDs) were assigned to income statement accounts and an account number indicated the appropriate jurisdiction. At the end of each month, the Accounting department transferred all incremental rate case costs to the appropriate deferral account. Incremental rate case costs refer to non-internal labor costs because internal labor costs are recovered through the payroll annualization.<sup>270</sup> But internal labor for department 490, Construction Management, was treated as an exception. Usually this department charged time to capital projects, but here internal labor for department 490 was assigned to rate case expense for providing support to the docket, such as answering data requests.<sup>271</sup> The Commission notes wages, bonuses, and benefits of attorneys

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<sup>266</sup> Tr. Vol. 16, pp. 3677-78 (Downey). See, November 22, 2010 Order, pp. 28-29 (summarizing tools KCP&L used to ensure management decisions were based on available data). See also, Rush Direct, p. 8 ("KCP&L brought on industry experts to provide support and experience and implemented rigorous controls, processes and procedures to ensure the proper schedule and cost control on the [Iatan 2] project.").

<sup>267</sup> Tr. Vol. 15, pp. 3389-92 (Weisensee); Tr. Vol. 16, 3364-65 (Downey).

<sup>268</sup> Tr. Vol. 26, pp. 3914-15 (Rush).

<sup>269</sup> Tr. Vol. 17, pp. 3953-54 (Weisensee).

<sup>270</sup> Weisensee Direct, p. 4; Tr. Vol. 15, p. 3404 (Weisensee).

<sup>271</sup> Weisensee Direct, pp. 4-5.

working in house on the rate case were recovered as an ongoing cost of operation through payroll annualization.

112. Weisensee explained that invoices for rate case vendors generally went to the person or department responsible for selecting and monitoring the particular vendor's services and costs, referred to as the "responsible person."<sup>272</sup> If the invoice was appropriate, the responsible person approved it for payment. If the invoice triggered questions or concerns, the responsible person contacted the vendor for an explanation and made appropriate adjustments before approving the invoice for payment. KCP&L Accounting and Regulatory Affairs departments were involved in a month-end closing process. The Regulatory Affairs department was responsible for monitoring rate case costs throughout the case.<sup>273</sup> Weisensee reported a month-end closing process validated the reasonableness of rate case costs, but we note those participating were in accounting, not the responsible person for reviewing the invoices.<sup>274</sup> Individuals in accounting seem ill-prepared to assess the reasonableness of legal and consulting invoices, but KCP&L's process seems to have vested final review in those individuals.

113. Evidence at the hearing suggested KCP&L's review process for legal expenses did not ensure careful and attentive review of work by outside law firms or consultants those firms employed. The legal department was the responsible person for reviewing law firm invoices, except Schiff Hardin invoices were assigned to another responsible party. But no responsible person assigned to review law firm invoices testified here, even though we previously noted rate case expense attributable to legal services here was excessive.<sup>275</sup> Nor does the evidence show a responsible person actively monitored or questioned charges accumulated by any outside law firm. KCP&L pointed to notations occasionally questioning a mislabeled assignment or correcting an inappropriate account number assigning jurisdiction,<sup>276</sup> but numerous miscoded

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<sup>272</sup> Weisensee Direct, p. 5.

<sup>273</sup> Weisensee Direct, p. 5.

<sup>274</sup> Tr. Vol. 15, p. 3411.

<sup>275</sup> November 22, 2010 Order, p. 92.

<sup>276</sup> Tr. Vol. 15, pp. 3548-3550 (Weisensee).

expenses not caught during KCP&L's review process were pointed out during the hearing.<sup>277</sup> No evidence shows a responsible party reviewed invoices to identify and adjust for duplication of work even though we found duplication of research assignments, testimony drafting, and witness preparation was obvious when we reviewed and compared invoices from law firms. Instead of adopting a process to ensure careful and cautious review of invoices, the evidence shows the Company pursued an unrestrained mission to validate KCP&L management's conduct with regard to Iatan 2. KCP&L used outside law firms and consultants to validate this work without regard for the cost. In contrast to the very detailed review and monitoring of the construction work on Iatan, done with extensive and costly help of the "Roberts team," no similar review process reviewed and monitored rate case expense, including hours incurred by the "Roberts team" to pursue the Company's stated mission for this rate case.<sup>278</sup> The Commission finds the failure to develop and implement such a review process with regard to rate case expense supports our conclusion that not all rate case expense accumulated by KCP&L was prudently incurred.

#### **B. Retainer Agreements.**

114. The Commission finds KCP&L management acted imprudently when it failed to enter into retainer agreements, or engagement contracts, with one of the law firms and several of the outside consultants. KCP&L was directed to provide, at the beginning of the evidentiary hearing, a copy of retainer agreements or engagement letters with each vendor for which KCP&L requested recovery of rate case expense in this proceeding.<sup>279</sup> KCP&L provided copies of sixteen agreements.<sup>280</sup>

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<sup>277</sup> Baldry Direct, pp. 10-15 and Exh. WEB 2, pp. 1-6. Weisensee Rebuttal, pp. 2-3; Tr. Vol. 15, pp. 3593-69 (Weisensee); Tr. Vol. 17, pp. 3963-68 (Weisensee).

<sup>278</sup> Tr. Vol. 16, p. 3716 (Downey).

<sup>279</sup> *Prehearing Officer's Order Denying KCP&L's Motion to Strike Testimony of CURB Witnesses Crane, Harden and Smith, Scheduling Filing of Post-hearing Briefs, and Directing KCP&L to File Retainer Agreements*, issued September 2, 2011, ¶ 10.

<sup>280</sup> KCP&L Exh. 1.

115. KCP&L could not provide a copy of a retainer agreement with the law firm Morgan Lewis & Bockius even though that firm billed \$155,227 for its work in this case.<sup>281</sup> Counsel for KCP&L explained that KCP&L and Morgan Lewis had a long-standing relationship beginning in 1999 and that an engagement letter or retainer contract with Morgan Lewis apparently did not exist for this rate case.<sup>282</sup> In its November 22, 2010 Order, the Commission did not allow recovery of costs for Morgan Lewis because work by the only attorney from that firm appearing at this hearing duplicated work of other experienced attorneys, including two former General Counsels to the Commission, one former Assistant General Counsel, and KCP&L's in-house regulatory attorney. The Commission concluded work of Morgan Lewis clearly duplicated work performed by other capable attorneys and refused to allow billing by this firm to be included in rate case expense.<sup>283</sup>

116. Now the Commission has learned KCP&L management did not enter into a retainer agreement for Morgan Lewis to provide service in this rate case. Regardless of the length of their relationship, failure to enter into a retainer agreement with Morgan Lewis regarding this complex proceeding reflects KCP&L management's carelessness and lack of judgment when incurring rate case expense here. Cafer, a former General Counsel to the Commission, was initially assigned the prudence issue for KCP&L, including cross-examination of Staff Witness Drabinski, and no evidence has explained why Van Gelder was actually necessary or essential to cross-examine Drabinski to present KCP&L's case. This was a management decision with no adjustment in billing judgment for duplicated effort. Evidence presented in this proceeding affirms the Commission's initial decision not to allow recovery of fees for Morgan Lewis as part of rate case expense.

117. Billings for Morgan Lewis include pretrial work by attorneys in the firm and reimbursement for work by subcontractor Global Prairie. No evidence has been offered to show

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<sup>281</sup> Weisensee Direct, Schedules JPW2010-10 and JPW2010-13.

<sup>282</sup> Tr. Vol. 17, pp. 4017-18 (Buffington).

<sup>283</sup> November 22, 2010 Order, p. 93.

prehearing work by Morgan Lewis attorneys was actually necessary or essential in presentation of KCP&L's case. The Commission will not allow charges these attorneys, who do not have a retainer agreement, to be included in rate case expense. Morgan Lewis invoices also billed for work by Global Prairie, which exceeded \$47,000. Apparently Global Prairie developed a microsite and other communications to provide "accurate and timely information to customers and other external stakeholders about [KCP&L's] pending rate case."<sup>284</sup> Cost to retain a public relations firm is not an appropriate rate case expense and it seems unusual, if not extraordinary, that a law firm would be charged with hiring such a firm. But no retainer agreement was produced describing what Morgan Lewis was hired to do in this case, so the Commission cannot objectively assess what KCP&L instructed Morgan Lewis to do. The Commission will not allow recovery of any expenses billed by Morgan Lewis, including those for Global Prairie, as part of rate case expense in this docket.

#### **VII. Assessment of Expenses for Commission, Staff and CURB.**

118. KCP&L requests rate case expense to reimburse its assessment under K.S.A. 66-1502 for expenses incurred by the Commission, Staff of the Commission, and CURB. In the November 22, 2010 Order, the Commission approved KCP&L's request to recover the estimated costs for the Commission and CURB totaling \$1,169,712.<sup>285</sup> Now KCP&L asks that it be allowed to recover the total amount it has been assessed for CURB and the Commission up to November 30, 2010. This amount includes \$1,234,781 for the Commission and its Staff and \$188,051 for CURB; the total is \$1,422,832.<sup>286</sup> As noted in our November 22, 2010 Order, KCP&L has no control over costs incurred by the Commission and CURB. In light of the work done by Staff and CURB in responding to the effort by KCP&L, the Commission finds the total of \$1,422,832 is a reasonable amount to include as rate case expense passed through to customers. KCP&L is allowed to recover this amount in rate case expense of this proceeding.

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<sup>284</sup> Weisensee Direct, Schedule JPW2010-13, p. 6; Tr. Vol. 15, pp. 3443-45 (Weisensee); Tr. Vol. 17, p. 3992 (Weisensee).

<sup>285</sup> November 22, 2010 Order, p. 90.

<sup>286</sup> Schedules JPW2010-10, JPW2010-30 (the KCC), and JPW2010-31 (CURB).



## VIII. Conclusion

119. The Commission concludes that \$5,922,832 is an appropriate amount to recover for rate case expense for this proceeding. We are aware that not every timekeeper submitting hours, hourly rate, and expenses, as reported by KCP&L, has been specifically evaluated and identified in this Order, as doing so would double its length. In reviewing the evidence submitted by the parties on reconsideration, the Commission has reviewed hundreds of pages of testimony, numerous exhibits, and thousands of invoices and billing statements. Suffice it to say, the Commission has considered the record as a whole in making this decision. Having done so, the Commission finds that the rate case expense to be included in revenue requirement and recovered from ratepayers is \$5,922,832. This rate case expense will be amortized over four years. We note that KCP&L has had rates recovering the four-year amortization of \$5,669,712<sup>287</sup> as specified in the November 22, 2010 Order.<sup>288</sup> In order to recover the additional \$253,120 awarded in this Order, KCP&L shall amortize the amount over three years.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Commission hereby awards \$5,922,832 as prudently incurred and just and reasonable rate case expense to be recovered from KCP&L's ratepayers, as set forth in this Order.

(B) Parties have agreed to electronic service, with no hard copy follow-up. Parties have fifteen days from the date of service of this Order in which to petition the Commission for reconsideration of any matter decided herein. K.S.A. 66-118b; K.S.A. 2010 Supp. 77-529(a)(1).

(C) The Commission designates this Order as precedent under 2011 House Bill 2027, *amending* K.S.A. 2010 Supp. 77-415, that may be relied upon in any subsequent adjudication.

(D) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

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<sup>287</sup> November 22, 2010 Order, p. 95.

<sup>288</sup> November 22, 2010 Order, pp. 83-95.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn, concurring; Loyd, Com.; Wright, Com.

Dated: JAN 18 2012

  
ORDER MAILED JAN 18 2012  
Patrice Petersen-Klein  
Executive Director

mjc

## Docket No. 10-KCPE-415-RTS

Chairman Sievers, concurring:

I write this concurring opinion to express concern about the incentives inherent in the regulatory process that inflate costs and flow those costs through to both customers and investors during the deepest most prolonged recession our country has experienced in more than a half a century. I also offer my observations as a former corporate manager and a lawyer who has worked in both private practice and as in-house counsel for a number of regulated firms.

At a high level, the Commission's role is to promote the public interest by balancing the interests of both consumers and investors. In this portion of the proceeding, KCP&L claimed rate case expenses totaling about \$9 million. The Commission affirmed its order granting KCP&L recovery of about \$5.7 million. Thus, consumers are asked to bear about 66% of claimed rate case expenses and investors about 34%. The Commission concludes that nothing presented in this portion of the case suggested that that balancing from the Commission's prior order is inappropriate, unjust or unreasonable.

I was not on the Commission during the litigation of the 415 docket, so I cannot opine about the merits of case or the performance of the individuals involved. I believe that many talented individuals participated in and contributed to this case. What is apparent to me, however, is that the rate case expenses associated in this matter are well beyond anything this Commission has previously approved and found to be "*just and reasonable*" or "prudent" and well beyond my experience.

At a high level, I start my analysis with the observation that a large proportion of the population has a dim view of government. It is viewed by some as inefficient and ineffective, and as dominated by efforts at ensuring on-going access to entitlement programs. Again, at a high level, this case presents two basic policy questions to me: (1) To what degree can a firm invoke the power of government (the Commission's rate making authority) to require others to pay for its legal expenses, and (2) To what degree do government processes (the litigious rate making process itself) contribute to those expenses.

As the Commission described in detail in its Order, and in Attachment A, the number of lawyers and consultants engaged in just this portion of the proceeding is remarkable. There were six different law firms with a total of 47 lawyers and consultants engaged by those firms billing a total of more than 16,000 hours of time and \$5.1 million to this proceeding. In addition, this portion of the proceeding involved eight outside consulting firms with a total of 46 individual time keepers who billed more than 9,700 hours and about \$1.8 million. Thus, a total of more than 90 time keepers billing more than 25,000 hours of legal and professional services were engaged in just this portion of this regulatory proceeding that dealt largely with a single hearing focused largely on a single issue -- the prudence of the Iatan project.

In this case, the awarded revenue requirement underlying these claimed rate case expenses is about \$21.8 million, so the claimed rate case expenses of \$9 million are approximately 41% of

awarded revenue requirements and the rate case expenses of \$5.7 million awarded by the Commission are 26% of awarded revenue requirements. As I will describe below, historically, awarded rate case expenses ranged between 0.8% and 5.9% of revenue requirements.

It is important to emphasize that the rate case expenses considered in this portion of this docket dealt largely with a single issue and a single hearing. KCP&L's witness testified that 70% of its expenses in this proceeding were focused on supporting the prudence of management decision to build the Iatan unit.<sup>1</sup> Most of the work effort in question in this portion of the case was allegedly devoted to an analysis of this issue, and specifically rebutting the testimony of a single Staff rebuttal witness, Walter Drabinski.<sup>2</sup> So, the work efforts under consideration here were not generally the costs of a wide ranging rate case that presented novel public policy considerations.

Nobel Prize winning economist Milton Friedman is famous for categorizing spending decisions into four categories, generally ranked from most to least efficient.<sup>3</sup>

1. Category one is spending your own money for your own benefit. Spending in this category is the most efficient. You are very careful with that money because it represents your work efforts and you are in the best position to know what you want to spend your money on. The spender has an economic incentive to minimize expenditures and personal insight into the benefits resulting from the spending.
2. Category two is when you spend your own money on someone else. For example, spending in this category might include when I buy a present for my wife. I am careful with the money, set a budget, but it's always questionable whether this was something she really wanted. The spender has an incentive to minimize expenditures, but may not have insight into the benefits of the spending.
3. Category three is when you spend someone else's money on yourself. An example of this is when you travel or dine out at your employer's or client's expense. You're careful, but not as much as when you're spending your own money. The spender has less incentive to minimize spending, and limited insight into the benefits of the spending.
4. Category four is when you spend someone else's money on someone else. Spending in this category has the potential of being the least efficient. Popular examples of this include government spending – the money comes from the taxpayer and government agencies decide who and what to spend it on. It can be inefficient because the agency that makes the spending decision did not have to earn the money being spent and it is speculating about what the recipient needs or wants. The spender has neither the incentive to minimize expenditures nor the insight into the benefits of the spending.

Fundamentally, this case involves spending in categories three and four – spending someone else's money. Lawyers and consultants hired by the utility are spending somebody else's money (consumers' and/or the investors' money) to pursue litigation. The company assumes it will recover whatever it spends on the litigation from either consumers or investors.

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<sup>1</sup> Rush Direct, pp. 11-12.

<sup>2</sup> Tr. Vol. 16, pp. 3667-68 (Downey).

<sup>3</sup> M. Friedman & R. Friedman, FREE TO CHOOSE: A PERSONAL STATEMENT, pp. 115-119 (1990).

CURB and Staff are also funded by assessments paid by the company, but at a far lower level that companies typically spend in a case. No one has an economic incentive to minimize their spending.

The amount to spend on rate cases and legal fees is a managerial decision. It rises to a Commission matter when the Commission is asked to allocate the spending between consumers and investors. As this case demonstrated, as a practical matter, because utility cases can involve many parties and contentious issues, an inquiry into the level of rate case expenses can open the door to parties second guessing the company's management decisions (*e.g.*, why does the company hire expensive outside lawyers rather than add additional in-house counsel to handle rate case matters), the hourly charges of attorneys, retainer agreements, "Lodestar" analyses, and cases that devolve into mind-numbing proceedings to examine invoices from lawyers and expert consultants and assess who did what, when they did it and whether it was prudent or not. Moreover, the problem of excessive rate case expenses is worsened and potentially never ends if, in every case, a separate proceeding is opened so that lawyers and expert witnesses are given license to question the fees charged by other lawyers and experts.

As a starting point, and as the Commission observed in its Order, it is important to recognize that recovery of legal expenses is not handled consistently between the judicial system and utility regulatory proceedings.

As the Commission points out in its Order, the "American" rule of civil and criminal litigation is that, absent a contractual or statutory requirement, parties to litigation bear their own attorneys' fees and the costs of prosecuting or defending their case.<sup>4</sup> Under the American rule, litigants typically hire lawyers and pay for the pursuit of their legal matters. Kansas courts follow the American rule<sup>5</sup> implying that Kansas courts believe it to be just and reasonable for litigants to bear their own attorneys' fees absent a statutory or contractual provision to the contrary.

It is also worth observing that lobbying expenses are consistently disallowed by this Commission.<sup>6</sup> Utility customers are not asked to pay for the company's expenses when it lobbies

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<sup>4</sup> In contrast, under the "English" rule the losing party pays the prevailing party's attorneys' fees.

<sup>5</sup> The Kansas Supreme Court in *Robinson v. City of Wichita Employees' Retirement Bd. of Trustees*, 241 P.3d 15, 24 (Kan. 2010) observed:

The "American Rule" is well established in Kansas so that, in the absence of statutory or contractual authorization, each party to the litigation is responsible for his or her own attorney fees, and the Kansas Act does not create an exception. See *Farm Bureau Mut. Ins. Co. v. Kurtenbach*, 265 Kan. 465, 479-80, 961 P.2d 53 (1998) (the "American rule" ... which is well established in Kansas, is that in the absence of statutory or contractual authorization, each party to litigation is responsible for his or her own attorney fees"); 8 Larson's Workers' Compensation Law § 133.01 ("The obligation to bear one's own legal fees, then, has become established as a necessary evil, which each client must contrive to bear as cheerfully as he or she can."); see also *Hodges v. Johnson*, 288 Kan. 56, 70, 199 P.3d 1251 (2009) ("In Kansas, courts are not permitted to award attorney fees without specific statutory authorization.").

<sup>6</sup> See, *e.g.*, the adjustments made to the requested revenue requirements in *In the Matter of an Audit and General Rate Investigation of Wheat State Telephone Company, Inc.*, Order Docket No. 03-WHST-503-AUD (Sept. 9, 2003); and, *In the Matter of the Application of Western Resources, Inc for Approval to Make Certain Changes in its Electric Service*, Order on Reconsideration, Docket No. 01-WSRE-436-RTS (Sept 5, 2001).

the legislature or engages in political activities – those are viewed as expenses properly borne by investors. Yet, when the Commission acts in its legislative role and sets rates,<sup>7</sup> recovery of rate case expenses from customers have historically been allowed. I don't believe there is any logical reason why it is appropriate to disallow recovery of the expenses of lawyers and experts who lobby the legislature, but allow recovery of expenses associated with hiring lawyers and experts to appear before the Commission when it acts in its delegated legislative role.

This inconsistent treatment is an historical artifact of regulation that we live with today. I can only wonder what the regulatory environment would be like if litigants bore their own legal expenses as is the case with traditional litigation rather than have a common law “right” to pass them on to someone else.

Rate case expenses are usually small in comparison to the overall request made in a typical rate case and the amount ultimately awarded, but these expenses are important for at least three policy considerations.

1. First, recovery of rate case expenses – whether those are expenses of the company or the assessments by CURB or the Commission Staff – are functionally equivalent to a “tax” levied on utility services to pay for the advocacy of interests that may or may not be aligned with the utility customers’ or investors’ interests even though they ultimately pay for that advocacy.<sup>8</sup> In addition, rate case expenses have virtually no relationship to the quality of service, the reliability of the service, product development or anything that consumers or investors would readily recognize as economically valuable or something they would willingly pay for if asked to approve such expenses before they are incurred.
2. Second, while a certain level of rate case expenditures are necessary to meet the requirements of participating in the regulatory process, when a company incurs significant rate case expenses it makes a wager hoping to recover more (or avoid a bad result) by spending more on lawyers and expert witnesses to make its case in the hearing room. In the marketplace, firms make similar wagers with investments in new products, marketing plans and the like in hopes of attracting more business, but bear the financial consequences of failure. In the regulatory world, however, the burden of the financial consequences of a failed litigation effort is determined by regulators and courts.
3. Finally, the utility regulatory process is asymmetric and the level of rate case expenses are, to a large degree, driven by the litigation efforts of other public interest parties with various economic incentives to reach accommodation in the case and who do not face the costs their activities engender. For example, CURB and Staff were parties in this matter whose expenses are funded by assessments paid by utility companies. Non-profit, public interest

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<sup>7</sup> *Kansas Gas and Elec. Co. v. State Corp. Com'n*, 239 Kan. 483, 720 P.2d 1063, 1072 (Kan. 1986).

<sup>8</sup> Micro-economics texts routinely include a demonstration that taxes transfer money from the payors to the recipient and in the process result in a deadweight loss that makes society worse off – the higher the tax, the larger is the deadweight social loss. When taxes are used to fund public programs, one can argue that the social benefits of the tax-funded programs are equal to or greater than the tax revenues taken from consumers and producers. Rate case expenses and legal expenses, however, do not typically fund programs with broad social or public interest benefits.

interveners may be funded by contributions made to it by their members and exist primarily to engage in litigation to advance social objectives or just to participate in a particularly controversial public utility proceeding. If Staff or CURB or non-profit public interest interveners are particularly aggressive in pursuit of their positions, as KCP&L has argued in this case, that adds to the utility's rate case expenses and legal bills. But, the regulatory process is fundamentally asymmetric – if a utility loses in regulatory litigation, it bears the financial consequences of its loss; if a public interest intervener loses, it does not directly bear the financial consequences of the loss. In such instances, is it fair/just to restrict the recovery from customers of the legal and rate case expenses the utility might incur defending itself against such entities?

The Commission found no Kansas statute, and none were cited by the parties that deal directly with the appropriate level of rate case expenses or attorneys' fees for public utilities. The case law standards applicable to rate case expenses tend to be broad statements of general principle. Based on my review, Kansas Courts appear to assume that, unlike many other litigants who have no common law right to recover their legal fees from adverse parties, utilities have a right to recover prudently incurred rate case expenses and legal fees from customers.

The Commission's authority over a determination of rate case expenses is rooted in its obligation to determine and maintain "*just and reasonable*" rates. K.S.A. 66-101b directs the Commission to "establish and maintain just and reasonable rates when the same are reasonably necessary in order to maintain reasonably sufficient and efficient service from such electric public utilities." The statute also declares that "[e]very unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, charge or exaction is prohibited and is unlawful and void." The Kansas Supreme Court has plainly held that "All of these [state and federal utility] cases clearly support the general principle that a state regulatory agency, in setting a rate for a public utility, must have as its goal a rate fixed within the 'zone of reasonableness' after an application of a balancing test in which the interests of all concerned parties are considered."<sup>9</sup>

So, what does "*just and reasonable*" include and how wide is the "*zone of reasonableness*?" The common meaning of the words "just" and "reasonable" provides some obvious guidance. "Just" implies an assessment of fairness – is this a fair result? "Reasonable" connotes an assessment of what's prudent, rational or customary given the circumstances. I believe that both "just" and "reasonable" can include a comparison of how past cases were handled or similarly situated companies acted or were treated.

While the Commission, in previous orders and by its practice requires that parties conform to the provisions of Rule 1.5 of the Kansas Rules of Professional Conduct, the eight factors set out in Rule 1.5 were developed to create standards governing traditional litigation and the conduct of private attorneys. I do not believe these factors were intended to be the entire inquiry into or substitute for the public interest the Commission must make in matters before it. Recall that the "reasonable" recovery of attorneys' fees in traditional litigation is the American rule where parties bear 100% of their own legal expenses absent an agreement to the contrary.

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<sup>9</sup> *Gas and Elec. Co. v. State Corp. Com'n*, 239 Kan. 483, 720 P.2d 1063, 1072 (Kan. 1986).

As used in Rule 1.5, “reasonable” is defined by reference to a standard governing private performance and conduct and not “just and reasonable” under a public interest analysis. Said differently, “reasonable” under Rule 1.5 does not include an assessment of the factors traditionally included in an assessment of “just and reasonable” such as the zone of reasonableness, a public interest balancing of consumer and investor interests, an assessment of the financial ability of the public utility to continue to provide service, whether there is an excessive burden on consumers or whether the resultant recovery is unduly discriminatory.

To get a sense of what rate case expense awards had been previously approved by the Commission and gauge the “zone of reasonableness” I looked at past awards of rate case expenses as a simple percentage of the awarded rate case expense.

### Summary of Rate Case Expense Awards in Past KCC Cases

Docket # Source	Settled or Litigated?	Awarded Revenue Requirement	Awarded Rate Case Expenses	Rate Case Expenses as % of Revenue Requirement
08-ATMG-280-RTS Testimony of Bill Baldry	Settled	\$2,100,000	\$89,674 3 year amortization	4.3%
10-ATMG-495-RTS Testimony of Bill Baldry	Settled	\$3,855,000	\$61,589 3 year amortization	1.6%
05-AQLG-367-RTS Testimony of Justin Grady	Settled	\$2,700,000	\$522,414 3 year amortization	19.3%
05-EPDE-980-RTS Testimony of Bill Baldry	Settled	\$5,100,000	\$41,180 5 year amortization	0.8%
10-EPDE-314-RTS Testimony of Jeremy Croy	Settled	\$2,790,000	\$164,232 5 year amortization	5.9%
06-KGSG-1209-RTS Testimony of Justin Grady	Settled	\$52,000,000	\$745,602 3 year amortization	1.4%
06-MDWG-1027-RTS Testimony of Bill Baldry	Settled	\$3,350,000	\$129,624 3 year amortization	3.9%
08-MDWE-594-RTS Testimony of Laura Bowman	Settled	\$10,028,870	\$270,964 3 year amortization	2.7%
11-MDWE-609-RTS Testimony of Kristina Luke	Settled	\$1,800,000	\$76,784 3 year amortization	4.3%
05-WSEE-981-RTS Testimony of Mary Jo Struttman	Litigated	\$38,797,189	\$2,081,610 5 year amortization	5.4%



Docket # Source	Settled or Litigated?	Awarded Revenue Requirement	Awarded Rate Case Expenses	Rate Case Expenses as % of Revenue Requirement
08-WSEE-1041-RTS Testimony of Laura Bowman	Settled	\$130,000,000	\$1,365,443 3 year amortization	1.1%
09-WHLE-681-RTS Testimony of Andria Finger	Settled	\$4,819,343	\$38,162 5 year amortization	0.8%
11-MKEE-439-RTS Testimony of Kristina Luke	Settled	\$3,058,931	\$113,382 5 year amortization	3.7%
<b>Past Awards in Cases Involving KCP&amp;L</b>				
06-KCPE-828-RTS Testimony of Laura Bowman	Settled	\$29,000,000	\$1,196,430 4 year amortization	4.1%
07-KCPE-905-RTS Testimony of Laura Bowman	Settled	\$28,000,000	\$457,852 4 year amortization	1.6%
09-KCPE-246-RTS Testimony of John Weisensee in Docket No. 10-KCPE-415-RTS	Settled	\$59,000,000	\$2,300,000 4 year amortization	3.9%

Based on the above, with the exception of the Aquila case (05-AQLG-367-RTS), the Commission's past award of rate case expenses ranges from about 0.8% to 5.9% of the awarded revenue requirements. While the circumstances and risks in each case certainly differ, the awards listed above provide some guidance of what has been customary ("*reasonable*") in past cases, including cases that involved KCP&L. Because these awards have been previously approved by the Commission and generally found to be "*just and reasonable*" I believe there is a presumption that rate case expenses that fall within this range are within the "*zone of reasonableness.*"

Most of the cases presented in the table above settled, so, in a very real sense, they represented agreement between the litigants about the "*reasonableness*" of the proposed recovery which included rate case expenses. Said differently, if the cases that settled included an unreasonable figure for rate case expenses – either exorbitant or grossly inadequate – the case would not likely have settled.

An argument could be made that an "apples-to-apples" comparison of the rate case expenses of settled cases with the claimed expenses in this litigated case should only include KCP&L's pre-hearing charges. As shown in Attachment A to the Commission's Order that summarizes the claimed expenditures in each phase of this proceeding, roughly \$4.6 million in claimed charges were incurred prior to the hearing (excluding CURB and Staff's assessments), which is about 66% of the total rate case expense claimed by KCP&L associated with its efforts in this proceeding. If one excludes KCP&L's hearing and post-hearing expenses, and assumes that the CURB and Staff pre-hearing assessments were \$939,069 (66% of the final amount of \$1,422,832), the total rate case expenses in the uncontested portion of this case comparable to the

historical rate case expenses in settled cases is about \$5.5 million. \$5.5 million is 25% of the awarded revenue requirement of \$21.8 million in this case and about 11% of the \$50.8 million requested by KCP&L. Thus, even after making an adjustment to distinguish this litigated case with the settled cases, this case is far from the historical norm awarded by the Commission even accounting for the difference between settled and litigated cases.

The proportionally largest awarded rate case expense was 19% of the awarded revenue requirement, a case involving Aquila's provision of natural gas services to its customers. Like this case, it involved many parties and interveners. Like this case, it resulted in the utility receiving a fraction of the requested revenue requirement (44% for Aquila vs. 39% for KCP&L). Thus, the rate case expenses in the Aquila case were about 19% of the awarded revenue requirement (\$2.7 million) and about 9% of the requested revenue requirement (\$6.2 million).<sup>10</sup> If the results of the settled Aquila case were applied to this matter, the awarded rate expenses would be between \$4.1 million (19% of the revenue requirement of \$21.8 million awarded to KCP&L) and \$4.6 million (9% of KCP&L's requested revenue requirement of \$50.8 million). The amount requested in this case – \$9 million – is about double these amounts, so this case represents an aberration even when compared to the proportionally largest award made by the Commission.

The Commissioners also bring their individual experiences to bear in assessing what's just and reasonable. In my experience, managing to a budget involved some basic activities that were missing in this case:

1. When firms manage to a budget, an aggregate limit is set for expenses, the limit is well documented, and managers' performance is assessed against whether they met this limit. In this case, the only estimate of legal expenses was set early on at \$2.1 million and then that estimate appears to have been ignored. No documentation of tracking against the budget or basic "how are we doing" monitoring appears to have been developed as the case proceeded. The irony of this case is that KCP&L appears to have very sophisticated systems for tracking and managing construction activities and costs, but nothing comparable for tracking and managing rate case expenses.
2. When firms are actively managing to a budget, bills from outside vendors are closely scrutinized and adjustments are common. As in-house counsel, I regularly disputed the billings from outside lawyers and would call them and demand adjustments if the work they performed seemed inappropriate to the task or excessive. As an outside lawyer, my clients often called me to ask what I did, why they were being charged for some work efforts and to demand an adjustment. This case is remarkable to me because even though six different law firms with a total of 47 lawyers and consultants engaged by those firms billed a total of more 16,000 hours, and eight outside consulting firms with a total of 46 individual time keepers billed a total of 9,700 hours, virtually no billing adjustments were made.

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<sup>10</sup> In addition, the rate case award is higher because Staff used a normalized rate case expense amount rather than actuals through a cut-off date. See Direct Testimony of Justin Grady at p. 10.

3. Managing to a budget means that someone – usually a company employee – is rewarded or punished for meeting or failing to meet the budget. Responsible managers typically have an incentive to closely monitor spending. In private sector firms, it is common to have monthly reports of how spending compares with the budget and to tell vendors to stop working when it is apparent that their bills will exceed the budget. In this case, no one appeared accountable for meeting or beating the rate case expense budget and tracking of budgeted amounts seems to be non-existent.
4. When a firm actively manages its legal/consulting expenses, projects and billings are usually supported by detailed documentation. In private practice, I usually sent clients a generic retainer agreement that spelled out rates and billing practices. When clients asked me to do something for which significant work effort was involved, I would send the client a letter or an e-mail that memorialized our conversation and my understanding of the work the client wished me to do along with my estimate of the work effort and charges that would be involved. My invoices were often a narrative of the work I had done, the expenses incurred and the hourly charges. In this case, some large, sophisticated firms had no retainer agreement and block billing seemed to be the rule rather than the exception. In addition, virtually every lawyer raised his/her hourly rate in the midst of the case without any explanation or documentation in the form of an agreement with their client.

A major explanatory difference between my experiences and the circumstances of this case, however, is that the firms I worked for were firms that were not guaranteed recovery of their expenses through regulation, but when they spent money on litigation, it was their own money, and not something that could be passed on to someone else. Likewise, my clients in private practice were spending their own money on legal efforts. In Friedman's hierarchy, my clients' and employers' frame of reference was largely in spending categories 1 and 2.

I believe that the excesses of this case arose because of the incentives created by traditional regulation. The Commission has historically allowed 100% recovery of rate case expenses (except when spending exceeded some unquantifiable "prudent" standard or the Rule 1.5 standard), Kansas case law supports the notion that regulated firms have a right to recover their rate case expenses rather than follow the American rule that the Courts apply to everyone else, KCP&L relies on contractors and outside counsel rather than employees to prosecute its regulatory proceedings and the major interveners – CURB and Staff – are both fee funded agencies where their expenses are passed along to ratepayers. In Friedman's hierarchy, everyone is spending someone else's money and has no incentive to minimize that spending or direct insight into the benefits of such spending.

It is important to emphasize that excessive rate case expenses are not just a phenomena that affects consumers. To the extent that excessive rate case expenses are disallowed, they raise costs that reduce the returns realized by investors. In this case, it would have been interesting to see how investors might have reacted to a management announcement that it was planning to spend \$9 million of investors' money on lawyers and consultants in a \$50.8 million rate case and that 70% of that spending would be devoted to rebutting the testimony of a single witness, Walter Drabinski.

In the regulatory environment, excessive legal or rate case expenses are not naturally controlled by the discipline of the market. Investors don't punish utility managers for spending

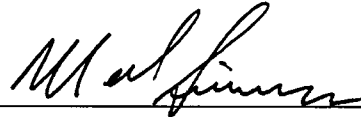
too much on legal fees and rate cases so long as those expenses are automatically flowed through to rates – they are gambling with someone else’s money. Inflating prices with excessive legal and rate case expenses will not be punished in the market by more cost efficient new entrants offering lower-priced alternatives because government flatly prohibits competitive entry. The regulatory theory is that a single, regulated provider can and will provide service at lower costs than multiple, competing providers and that regulators can and will prevent imprudent expenditures. In my brief tenure as a Commissioner, I have not seen large numbers of lawyers, experts and consultants in cases involving regulated competitive industries, such as telecom, trucking, and oil and gas.

It’s surprising to me that these excesses have not arisen before now.

I would have preferred that the Commission use this case to establish an explicit policy with respect to rate case expenses that would provide guidance to others in future cases. However, not having input from a broad base of affected parties makes establishing policy in narrow cases problematic and I respect the Commission’s decision to not articulate an explicit policy. For what it is worth, here is the policy I recommend be applied in future cases:

- a. Rate case and legal expenses that are assessed by the Commission, its Staff and CURB and thus, cannot be avoided by the utility, are recoverable in rates paid by consumers. To deny recovery of these unavoidable, uncontrollable costs would be unjust and unreasonable, and recovery is mandated by statute.
- b. If a case primarily involves questions that do not implicate the public interest, but are matters that are fundamentally matters of private interests (*e.g.*, a case involving a contest between a utility and a single customer), rate case expenses and legal expenses should be borne by the parties as they are in private litigation and borne by the litigants absent a contractual or statutory requirement to the contrary.
- c. If proposed rate case expenses fall within the “*zone of reasonableness*” as defined by the range of awards as a percentage of the awarded revenue requirement previously approved by the Commission (*i.e.*, generally between 0.8% and 5.9% of the awarded revenue requirement from past Commission decisions), the Commission will presume that such expenses are “*just and reasonable*” consistent with its past findings and awards. Those challenging such a presumption would bear the burden of presenting sufficient evidence to demonstrate that the award sought is adverse to the public interest. Such a presumption seems efficient in that it will avoid future cases devolving into discovery battles, second guessing management decisions and contested litigation over attorneys’ fees and rate case expenses as occurred in this proceeding.
- d. If rate case expense falls outside the presumptive “*zone of reasonableness*,” then the utility bears the burden of showing that recovery from customers is “*just and reasonable*” which, consistent with past Commission practice, requires the following:
  - i. Sufficient evidence showing that the requested expenses are reasonable using the metric established by Rule 1.5 of the Kansas Rules of Professional Conduct, that the requested expenses are rational and customary given the circumstances of the case (“*reasonable*”) and that it is fair (“*just*”) to pass such expenses on to customers;
  - ii. Evidence showing that recovery of the requested expenses is “*just and reasonable*” and in the public interest as might be demonstrated by evidence to assess: (1) the

- impact on the financial ability of the public utility to continue to provide service; (2) the burden on consumers; and/or (3) whether the recovery is unduly discriminatory;
- iii. As required by the Commission in its past decisions, the requested expenses must be supported by an itemized statement of the nature of the activity or services performed, the amount of time expended for each activity or service, and the identity of the attorney or other personnel that performed each activity or service; and,
  - iv. As described by the Commission in its past decisions, the Commission may reduce an attorney fee award if the recording of tasks worked on is insufficient, if multiple attorneys duplicate their effort, when time is expended on activities unrelated to issues or litigation, and for time spent on travel.



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Mark Sievers -- Chairman

		Application July 2009 - Dec 2009		Discovery Jan 2010 - May 2010		Rebuttal Jun 2010 - July 2010		Hearing Aug 2010		Post-Hearing Sept, Oct, Nov 2010		Total By Attorney/Consultant	
		Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges
<b>LEGAL SERVICE PROVIDERS</b>													
Cafer Law Office	1. Glenda Cafer	524.00	\$142,925.00	228.25	\$68,475.00	314.00	\$94,200.00	268.75	\$80,625.00	304.25	\$91,275.00	1,639.25	\$477,500.00
Duane Morris	1. C.W. Whitney	4.12	\$2,369.00									4.12	\$2,369.00
	2. A. Bates	125.36	\$60,172.80	33.00	\$16,005.00	110.40	\$53,544.00	113.00	\$54,805.00	13.40	\$6,499.00	395.16	\$191,025.80
	3. J.D. Cook	100.20	\$43,086.00	12.20	\$5,490.00	48.50	\$21,825.00	17.70	\$7,965.00			178.60	\$78,366.00
	4. C. Dougherty	0.20	\$42.00									0.20	\$42.00
	5. D.A. Nosse					6.40	\$1,376.00					6.40	\$1,376.00
	Total for Duane Morris	229.88	\$105,669.80	45.20	21,495.00	165.30	\$76,745.00	130.70	\$62,770.00	13.40	\$6,499.00	584.48	\$273,178.80
Morgan Lewis	1. A.J. Conway-Hatch	1.40	\$756.00									1.40	\$756.00
	2. F.F. Fielding	1.68	\$1,436.40									1.68	\$1,436.40
	3. S.P. Mahinka	1.40	\$1,260.00									1.40	\$1,260.00
	4. B. VanGelder	1.40	\$924.00			5.80	\$3,828.00	146.20	\$96,492.00	1.30	\$858.00	154.70	\$102,102.00
	Total for Morgan Lewis	5.88	\$4,376.40	0.00	0.00	5.80	\$3,828.00	146.20	\$96,492.00	1.30	\$858.00	159.18	\$105,554.40
Polsinelli Shughart	1. Frank Caro	430.60	\$166,312.50	236.70	\$92,313.00	373.90	\$145,821.00	291.80	\$113,802.00	366.90	\$146,760.00	1,699.90	\$665,008.50
	2. Ann Callenbach	228.50	\$63,020.00	159.60	\$44,688.00	236.90	\$66,332.00	272.20	\$76,216.00	230.70	\$69,210.00	1,127.90	\$319,466.00
	3. B.L. Kane	303.60	\$63,615.25	159.70	\$34,335.50	297.50	\$63,962.50	221.10	\$47,536.50	420.20	\$98,747.00	1,401.25	\$308,196.75
	4. L.A. Hagedorn	47.10	\$8,713.50	63.85	\$11,812.25	253.70	\$46,934.50	247.25	\$45,741.25	380.15	\$76,030.00	992.05	\$189,231.50
	5. S.A. Damarco	17.10	\$1,710.00									17.10	\$1,710.00
	6. T.J. Sear	3.70	\$1,258.00	6.40	\$2,176.00							10.10	\$3,434.00
	7. S.C. Willman							1.75	\$612.50			1.75	\$612.50
	9. K.D. Stohs	15.00	\$3,450.00							7.80	\$1,950.00	22.80	\$5,400.00
	10. K.J. Breer									1.30	\$357.50	1.30	\$357.50
	11. A.F. Ruup	1.10	\$385.00									1.10	\$385.00
	12. A. Morgan	36.60	\$10,106.00									36.60	\$10,106.00
	13. W.W. Sneed	3.00	\$975.00									3.00	\$975.00
	Total for Polsinelli	1,086.30	\$319,545.25	626.25	\$185,324.75	1,162.00	\$323,050.00	1,034.10	\$283,908.25	1,407.05	\$393,054.50	5,314.85	\$1,504,882.75

Rate Case Expense

Summary of Hourly Fees by Provider by Activity Time Frame (Disbursements are excluded)

		Application		Discovery		Rebuttal		Hearing		Post-Hearing		Total	
		July 2009 - Dec 2009		Jan 2010 - May 2010		Jun 2010 - July 2010		Aug 2010		Sept, Oct, Nov 2010		By Attorney/Consultant	
		Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges
Schiff Hardin	1. Ken Roberts	136.75	\$75,896.25	40.50	\$22,477.50	292.75	\$162,476.25	206.50	\$114,607.50	163.50	\$90,742.50	840.00	\$466,200.00
	2. Carrie Okizaki	189.25	\$85,162.50	66.25	\$29,812.50	386.00	\$173,700.00	160.00	\$72,000.00	196.05	\$88,222.50	997.55	\$448,897.50
	3. Eric Gould	347.00	\$102,365.00	72.00	\$21,240.00	496.00	\$146,320.00	233.25	\$68,808.75	210.80	\$62,186.00	1,359.05	\$400,919.75
	4. Amanda Schermer	157.00	\$51,810.00	13.75	\$4,537.50	278.75	\$91,987.50	197.00	\$65,010.00	184.10	\$60,753.00	830.60	\$274,098.00
	5. Aaron Hitchcock	36.50	\$6,570.00									36.50	\$6,570.00
	6. Othiel Glover	23.00	\$3,220.00	54.75	\$7,665.00	230.75	\$32,305.00	71.00	\$9,940.00			379.50	\$53,130.00
	7. Kevin Kolton			1.00	\$520.00	86.00	\$44,720.00	24.75	\$12,870.00			111.75	\$58,110.00
	8. Virgil Montgomery					81.50	\$42,380.00	30.00	\$15,600.00			111.50	\$57,980.00
	9. H. Hennig Rowe					66.25	\$28,487.50			7.25	\$3,117.50	73.50	\$31,605.00
	10. Ned Markey					167.50	\$41,875.00	21.75	\$5,437.50			189.25	\$47,312.50
	11. Sean Hoadley			1.25	\$243.75	88.00	\$17,160.00	96.50	\$18,817.50			185.75	\$36,221.25
	12. Thomas Priebe					20.75	\$2,386.25					20.75	\$2,386.25
	13. J. Wilson			43.42	\$13,026.00	279.50	\$83,850.00	75.00	\$22,500.00			397.92	\$119,376.00
	14. Meggan Witte					220.00	\$11,000.00	33.50	\$1,675.00			253.50	\$12,675.00
	15. Beverly Maus			148.41	\$7,420.50	318.50	\$15,925.00	101.50	\$5,075.00			568.41	\$28,420.50
	16. Steve Jones			290.13	\$79,784.38	226.25	\$62,218.75	154.50	\$42,487.50			670.88	\$184,490.63
	17. Kathryn Hejdl			162.88	\$16,287.50	71.75	\$7,175.00	29.00	\$2,900.00			263.63	\$26,362.50
	18. Project Control Serv			24.50	\$3,062.50	3.50	\$437.50	13.50	\$1,687.50			41.50	\$5,187.50
	19. Meyer Construction					737.85	\$273,032.50	438.50	\$171,388.35	36.25	\$16,312.50	1,212.60	\$460,733.35
	20. Shawn Hoadley			1.25	\$187.50							1.25	\$187.50
	Total for Schiff		889.50	\$325,023.75	920.08	\$206,264.63	4,051.60	\$1,237,436.25	1,886.25	\$630,804.60	797.95	\$321,334.00	8,545.38
SNR Denton	1. Zobrist	3.00	\$1,425.00			0.30	\$145.50					3.30	\$1,570.50
	2. R. Steiner	18.25	\$6,661.25	47.18	\$17,220.70	78.75	\$28,743.75					144.18	\$52,625.70
	3. S. Cunningham					6.00	\$2,160.00	9.90	\$3,564.00			15.90	\$5,724.00
	4. L. Gilbreath	0.50	\$87.50									0.50	\$87.50
	Total for SNR Denton	21.75	\$8,173.75	47.18	\$17,220.70	85.05	\$31,049.25	9.90	\$3,564.00	0.00	\$0.00	163.88	\$60,007.70
Total for Legal Services Providers		2,757.31	\$905,713.95	1,866.96	\$498,780.08	5,783.75	\$1,766,308.50	3,475.90	\$1,158,163.85	2,523.95	\$813,020.50	16,407.02	\$5,141,986.88

Rate Case Expense

Summary of Hourly Fees by Provider by Activity Time Frame (Disbursements are excluded)

		Application July 2009 - Dec 2009		Discovery Jan 2010 - May 2010		Rebuttal Jun 2010 - July 2010		Hearing Aug 2010		Post-Hearing Sept, Oct, Nov 2010		Total By Attorney/Consultant	
		Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges
<b>CONSULTANTS</b>													
Black & Veatch	1. Larry Loos	170.00	\$23,567.75	79.00	\$11,222.04	76.00	\$10,536.17	52.00	\$16,055.00	21.00	\$6,483.75	398.00	\$67,864.72
	2. Robert Brady	49.00	\$6,793.06	6.00	\$831.80	9.00	\$1,247.70					64.00	\$8,872.57
	3. Gregory Macias	46.00	\$4,905.51			5.00	\$533.21					51.00	\$5,438.71
	4. Mathew Powis	148.00	\$11,995.03									148.00	\$11,995.03
	Total for Black & Veatch	413.00	\$47,261.34	85.00	\$12,053.85	90.00	\$12,317.08	52.00	\$16,055.00	21.00	\$6,483.75	661.00	\$94,171.02
FINANCO, Inc.	1. Sam Hadaway	23.50	\$9,400.00			55.25	\$22,100.00	34.00	\$13,600.00	32.25	\$12,900.00	145.00	\$58,000.00
	2. Heidebrecht	28.00	\$7,000.00			40.00	\$10,000.00	10.00	\$2,500.00	6.00	\$1,500.00	84.00	\$21,000.00
	Total for FINANCO	51.50	\$16,400.00	0.00	\$0.00	95.25	\$32,100.00	44.00	\$16,100.00	38.25	\$14,400.00	229.00	\$79,000.00
Gannet Fleming, Inc.	1. John Spanos	63.00	\$6,240.00	26.00	\$2,535.00	26.00	\$3,022.50	44.00	\$4,290.00	41.00	\$3,997.50	200.00	\$20,085.00
	2. Cheryl Rutter	5.00	\$280.00	1.50	\$60.00	1.00	\$60.00	1.50	\$60.00	2.00	\$80.00	11.00	\$540.00
	3. Krista McCormick	25.00	\$1,060.00	7.50	\$300.00	4.50	\$180.00	5.00	\$200.00	3.00	\$120.00	45.00	\$1,860.00
	4. Richard Clarke	3.00	\$585.00									3.00	\$585.00
	5. Ned Allis	304.00	\$16,050.00	7.00	\$367.50	2.00	\$210.00	2.00	\$105.00			315.00	\$16,732.50
	6. Samantha Marino	1.50	\$100.00							5.00	\$262.50	6.50	\$362.50
	7. Frederick Johnston	1.00	\$55.00	3.00	\$172.50	8.50	\$805.00	10.00	\$575.00	5.00	\$287.50	27.50	\$1,895.00
Total for Gannet Flemming, Inc.	402.50	\$24,370.00	45.00	\$3,435.00	42.00	\$4,277.50	62.50	\$5,230.00	56.00	\$4,747.50	608.00	\$42,060.00	
Mgt. App. Consulting	1. Paul Normand	192.00	\$37,440.00	4.00	\$780.00	34.00	\$6,630.00	12.00	\$2,340.00	31.00	\$6,045.00	273.00	\$53,235.00
	2. James Harrison	28.75	\$5,606.25					1.00	\$195.00			29.75	\$5,801.25
	3. Debbie Gajewski	141.00	\$25,380.00	4.00	\$720.00	18.00	\$3,240.00	9.50	\$1,710.00	1.00	\$180.00	173.50	\$31,230.00
	4. Michael Morganti	47.00	\$8,460.00									47.00	\$8,460.00
	5. Michael Normand	56.50	\$4,520.00									56.50	\$4,520.00
Total for Management Applications Consulting	465.25	\$81,406.25	8.00	\$1,500.00	52.00	\$9,870.00	22.50	\$4,245.00	32.00	\$6,225.00	579.75	\$103,246.25	



Summary of Hourly Fees by Provider by Activity Time Frame (Disbursements are excluded)

		Application		Discovery		Rebuttal		Hearing		Post-Hearing		Total	
		July 2009 - Dec 2009		Jan 2010 - May 2010		Jun 2010 - July 2010		Aug 2010		Sept, Oct, Nov 2010		By Attorney/Consultant	
		Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges
NextSource Inc.	1. Chris Davidson	415.25	\$29,619.88	215.00	\$16,067.90	316.50	\$25,666.13	185.75	\$15,289.13	87.25	\$6,987.75	1,219.75	\$93,630.77
	2. Melissa McEachron	11.90	\$321.66	294.25	\$8,105.89	109.50	\$3,083.65	22.00	\$618.20	101.25	\$2,919.03	538.90	\$15,048.43
	3. Chris Giles	270.00	\$67,500.00	243.00	\$60,750.00	284.00	\$71,000.00	208.50	\$52,125.00	85.00	\$21,250.00	1,090.50	\$272,625.00
	4. Forrest Archibald	61.00	\$6,832.00	45.25	\$5,068.00							106.25	\$11,900.00
	5. Marty Jenson	93.75	\$3,263.87	61.00	\$2,136.03	17.50	\$601.65	51.50	\$1,770.57	11.00	\$378.18	234.75	\$8,150.29
	6. Catherine Schubert	4.75	\$117.34									4.75	\$117.34
	7. Alan Yee	21.25	\$1,880.63	11.25	\$995.63	8.00	\$723.60					40.50	\$3,599.85
	8. Kelly Bradfield	3.00	\$152.10							0.25	\$12.49	3.25	\$164.59
	9. George Mislavovich	21.50	\$2,046.80	1.50	\$145.80							23.00	\$2,192.60
	10. Donald Wilker	8.25	\$730.13	19.99	\$1,769.12							28.24	\$2,499.24
	11. Meagan Bange	13.00	\$710.58	11.50	\$664.04	29.00	\$1,636.38					53.50	\$3,011.00
	12. Michelle Young	14.75	\$591.50	12.00	\$482.12							26.75	\$1,073.62
	13. Chris Stainaker	25.49	\$881.70	30.74	\$1,076.27							56.23	\$1,957.97
	14. Denise Williams			0.25	\$10.50							0.25	\$10.50
	Total for NextSource	963.89	\$114,648.16	945.73	\$97,271.28	764.50	\$102,711.40	467.75	\$69,802.90	284.75	\$31,547.45	3,426.62	\$415,981.19
Pegasus Global Holdings	1. K. Nielsen	327.56	\$96,630.20	127.79	\$37,699.23	297.80	\$87,851.00	160.00	\$47,200.00	62.50	\$18,437.50	975.65	\$287,817.93
	2. P. Galloway	249.58	\$73,626.10	26.88	\$7,929.01	190.60	\$56,227.00	106.90	\$31,535.50			573.96	\$169,317.61
	3. J. Dignum	405.25	\$119,548.75	142.77	\$42,116.27	317.85	\$93,765.75	267.50	\$78,912.50	9.00	\$2,655.00	1,142.37	\$336,998.27
	4. G. Tucker	41.54	\$12,254.30	7.98	\$2,353.51	90.90	\$26,815.50	65.50	\$19,322.50	16.60	\$4,897.00	222.52	\$65,642.81
	5. J. Owen	120.30	\$35,488.50	33.94	\$10,012.30	89.00	\$26,255.00					243.24	\$71,755.80
	6. B. Pearson	61.00	\$9,150.00	3.19	\$478.50	195.50	\$29,325.00	21.95	\$3,292.50			281.64	\$42,246.00
	7. J. Black	90.50	\$13,575.00	32.60	\$4,890.00	159.50	\$23,925.00					282.60	\$42,390.00
	8. C. Kennedy					107.00	\$16,050.00					107.00	\$16,050.00
	9. K. Williams					9.50	\$1,425.00					9.50	\$1,425.00
	Total for Pegasus Global Holdings	1,295.73	\$360,272.85	375.15	\$105,478.82	1,457.65	\$361,639.25	621.85	\$180,263.00	88.10	\$25,989.50	3,838.48	\$1,033,643.42
Siemens Energy	1. Edrissa Cham	108.00	\$4,725.00									108.00	\$4,725.00
	2. Octavio Guterrez	137.00	\$7,706.25									137.00	\$7,706.25
	3. Subcontractor Labor	124	\$7,595.00									124.00	\$7,595.00
	Total of Siemens	369.00	\$20,026.25									369.00	\$20,026.25
Towers Watson	1. Ken Vogel					4.5	\$2,812.50	10	\$6,250.00	2	\$1,300.00	16.50	\$10,362.50
	2. Jason Benbow					11	\$5,115.00	3	\$1,395.00	3.5	\$1,785.00	17.50	\$8,295.00
	Total for Towers Watson					15.5	\$7,927.50	\$13.00	\$7,645.00	\$5.50	\$3,085.00	\$34.00	\$18,657.50
Total for Consultants		3,960.87	\$664,384.85	1,458.88	\$219,738.94	2,516.90	\$530,842.74	1,283.60	\$299,340.90	525.60	\$92,478.20	9,745.85	\$1,806,785.63

Rate Case Expense

Summary of Hourly Fees by Provider by Activity Time Frame (Disbursements are excluded)

	Application		Discovery		Rebuttal		Hearing		Post-Hearing		Total	
	July 2009 - Dec 2009		Jan 2010 - May 2010		Jun 2010 - July 2010		Aug 2010		Sept, Oct, Nov 2010		By Attorney/Consultant	
	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges	Hours	Charges
TOTAL FOR LEGAL SERVICES	2,757.31	\$905,713.95	1,866.96	\$498,780.08	5,783.75	\$1,766,308.50	3,475.90	\$1,158,163.85	2,523.95	\$813,020.50	16,407.02	\$5,141,986.88
TOTAL FOR CONSULTANTS	3,960.87	\$664,384.85	1,458.88	\$219,738.94	2,516.90	\$530,842.74	1,283.60	\$299,340.90	525.60	\$92,478.20	9,745.85	\$1,806,785.63
GRAND TOTAL	<u>6,718.18</u>	<u>\$1,570,098.80</u>	<u>3,325.84</u>	<u>\$718,519.02</u>	<u>8,300.65</u>	<u>\$2,297,151.24</u>	<u>4,759.50</u>	<u>\$1,457,504.75</u>	<u>3,049.55</u>	<u>\$905,498.70</u>	<u>26,152.87</u>	<u>\$6,948,772.50</u>

Source: Rate Case Proceeding Direct Testimony of John P. Weisensee dated May 6, 2011. Schedules JPW2010-11 through JPW2010-25

**CERTIFICATE OF SERVICE**

JAN 18 2012

10-KCPE-415-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order on Rate Case Expense was served by electronic mail this 18th day of January, 2012, to the following parties who have waived receipt of follow-up hard copies:

JAMES G. FLAHERTY, ATTORNEY  
ANDERSON & BYRD, L.L.P.  
216 SOUTH HICKORY  
PO BOX 17  
OTTAWA, KS 66067  
Fax: 785-242-1279  
jflaherty@andersonbyrd.com

MICHAEL E. AMASH, ATTORNEY  
BLAKE & UHLIG PA  
SUITE 475 NEW BROTHERHOOD BLDG  
753 STATE AVE.  
KANSAS CITY, KS 66101  
Fax: 913-321-2396  
mea@blake-uhlig.com

JAMES R. WAERS, ATTORNEY  
BLAKE & UHLIG PA  
SUITE 475 NEW BROTHERHOOD BLDG  
753 STATE AVE.  
KANSAS CITY, KS 66101  
Fax: 913-321-2396  
jrw@blake-uhlig.com

GLEND A CAFER, ATTORNEY  
CAFER LAW OFFICE, L.L.C.  
3321 SW 6TH STREET  
TOPEKA, KS 66606  
Fax: 785-233-3040  
gcafer@sbcglobal.net

NIKI CHRISTOPHER, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
n.christopher@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

C. STEVEN RARRICK, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
s.rarrick@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

DELLA SMITH  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
d.smith@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

SHONDA SMITH  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
sd.smith@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

DAVID SPRINGE, CONSUMER COUNSEL  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
d.springe@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

BLAKE MERTENS  
EMPIRE DISTRICT ELECTRIC COMPANY  
602 S JOPLIN AVE (64801)  
PO BOX 127  
JOPLIN, MO 64802  
Fax: 417-625-5169  
bmertens@empiredistrict.com

**CERTIFICATE OF SERVICE**

JAN 18 2012

10-KCPE-415-RTS

KELLY WALTERS, VICE PRESIDENT  
EMPIRE DISTRICT ELECTRIC COMPANY  
602 S JOPLIN AVE (64801)  
PO BOX 127  
JOPLIN, MO 64802  
Fax: 417-625-5173  
kwalters@empiredistrict.com

C. EDWARD PETERSON, ATTORNEY  
FINNEGAN CONRAD & PETERSON LC  
1209 PENNTOWER OFFICE CENTER  
3100 BROADWAY  
KANSAS CITY, MO 64111  
Fax: 816-756-0373  
epeters@fcplaw.com

DAVID WOODSMALL, ATTORNEY  
FINNEGAN CONRAD & PETERSON LC  
1209 PENNTOWER OFFICE CENTER  
3100 BROADWAY  
KANSAS CITY, MO 64111  
Fax: 816-756-0373  
dwoodsmall@fcplaw.com

DARRELL MCCUBBINS, BUSINESS MANAGER  
IBEW LOCAL UNION NO. 1464  
PO BOX 33443  
KANSAS CITY, MO 64120  
Fax: 816-483-4239  
local1464@aol.com

JERRY ARCHER, BUSINESS MANAGER  
IBEW LOCAL UNION NO. 1613  
6900 EXECUTIVE DR  
SUITE 180  
KANSAS CITY, MO 64120  
local1613@earthlink.net

BILL MCDANIEL, BUSINESS MANAGER  
IBEW LOCAL UNION NO. 412  
6200 CONNECTICUT  
SUITE 105  
KANSAS CITY, MO 64120  
Fax: 816-231-5515  
bmcdaniel412@msn.com

DENISE M. BUFFINGTON, CORPORATE COUNSEL  
KANSAS CITY POWER & LIGHT COMPANY  
ONE KANSAS CITY PLACE 1200 MAIN STREET (64105)  
P.O. BOX 418679  
KANSAS CITY, MO 64141-9679  
Fax: 816-556-2787  
denise.buffington@kcpl.com

ROGER W. STEINER, MISSOURI CORPORATE COUNSEL  
KANSAS CITY POWER & LIGHT COMPANY  
ONE KANSAS CITY PLACE 1200 MAIN STREET (64105)  
P.O. BOX 418679  
KANSAS CITY, MO 64141-9679  
Fax: 816-556-2787  
roger.steiner@kcpl.com

MARY TURNER, DIRECTOR, REGULATORY AFFAIRS  
KANSAS CITY POWER & LIGHT COMPANY  
ONE KANSAS CITY PLACE 1200 MAIN STREET (64105)  
P.O. BOX 418679  
KANSAS CITY, MO 64141-9679  
Fax: 816-556-2110  
mary.turner@kcpl.com

MATTHEW SPURGIN, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3167  
m.spurgin@kcc.ks.gov  
\*\*\*Hand Delivered\*\*\*

JOHN P. DECOURSEY, DIRECTOR, LAW  
KANSAS GAS SERVICE, A DIVISION OF ONEOK, INC.  
7421W 129TH STREET (66213-2634)  
PO BOX 25957  
SHAWNEE MISSION, KS 66225-5957  
Fax: 913-319-8622  
jdecoursey@kgas.com

WALKER HENDRIX, DIR, REG LAW  
KANSAS GAS SERVICE, A DIVISION OF ONEOK, INC.  
7421W 129TH STREET (66213-2634)  
PO BOX 25957  
SHAWNEE MISSION, KS 66225-5957  
Fax: 913-319-8622  
whendrix@oneok.com

**CERTIFICATE OF SERVICE**

JAN 18 2012

10-KCPE-415-RTS

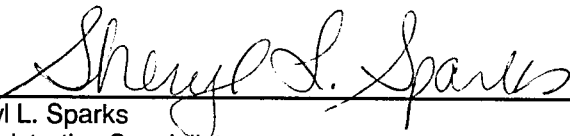
JO SMITH, SR OFFICE SPECIALIST  
KANSAS GAS SERVICE, A DIVISION OF ONEOK, INC.  
7421 W 129TH STREET (66213-2634)  
PO BOX 25957  
SHAWNEE MISSION, KS 66225-5957  
Fax: 913-319-8622  
josmith@oneok.com

ANNE E. CALLENBACH, ATTORNEY  
POLSINELLI SHUGHART  
6201 COLLEGE BLVD STE 500  
OVERLAND PARK, KS 66211-2435  
Fax: 913-451-6205  
acallenbach@polsinelli.com

FRANK A. CARO, JR., ATTORNEY  
POLSINELLI SHUGHART  
6201 COLLEGE BLVD STE 500  
OVERLAND PARK, KS 66211-2435  
Fax: 913-451-6205  
fcaro@polsinelli.com

LUKE A. HAGEDORN, ATTORNEY  
POLSINELLI SHUGHART  
6201 COLLEGE BLVD STE 500  
OVERLAND PARK, KS 66211-2435  
Fax: 913-451-6205  
lhagedorn@polsinelli.com

JAMES P. ZAKOURA, ATTORNEY  
SMITHYMAN & ZAKOURA, CHTD.  
7400 W 110TH ST STE 750  
OVERLAND PARK, KS 66210-2362  
Fax: 913-661-9863  
jim@smizak-law.com

  
\_\_\_\_\_  
Sheryl L. Sparks  
Administrative Specialist

ORDER MAILED JAN 18 2012

**SCHEDULE KM-s8**

**HAS BEEN DEEMED**

**HIGHLY CONFIDENTIAL**

**IN ITS ENTIRETY**