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-2012-0174

REPLY TO STAFF'S RESPONSE TO MOTION TO STRIKE
PRE-FILED TESTIMONY AND REJECT TARIFFS

Kansas City Power & Light Company ("KCP&L" or "Company") states the following in reply to Staff's Response to Motion to Strike Pre-Filed Testimony and Reject Tariffs filed on June 19, 2012. Staff's Response supports the Motion to Strike Pre-Filed Testimony and Reject Tariffs filed on May 25 by the Office of the Public Counsel ("OPC") and Midwest Energy Consumers' Group ("MECG"):

I. STAFF'S RESPONSE IGNORES THE LANGUAGE OF THE 2005 STIPULATION.

1. Staff erroneously supports the position taken by OPC and MECG (collectively "Movants") which ignores the language of the off-system sales ("OSS") provision in the 2005 Stipulation and Agreement ("Stipulation") that governs KCP&L's Regulatory Plan which expired in June 2010. The Movants have taken the extraordinary step of moving to strike and exclude from any Commission consideration those portions of KCP&L's direct testimony that recommend a limited sharing mechanism within the Company's proposal for an Interim Energy Charge.

2. Staff's Response failed to analyze the critical language in Section III(B)(1)(j) of the Stipulation. As discussed by KCP&L in Section II of its Opposition to Motion to Strike filed on June 15, Sentence (c) of that subsection provides that KCP&L's OSS "will continue to be used to establish Missouri jurisdictional rates as long as the related investments and expenses are considered in the determination of Missouri jurisdictional rates."

3. This provision, which did not expire on June 1, 2010 with the Regulatory Plan, only requires that off-system sales margin be used in the ratemaking process. It is not an absolute prohibition on a sharing mechanism such as proposed by Mr. Rush when OSS margins exceed the 60th percentile of expected revenues. Moreover, it says nothing about a permanent asymmetrical mechanism, like the present one, where rates presume that KCP&L will earn OSS margin up to the 40th percentile of expected sales (and absorb any gap between lower sales and that 40% metric), and refund to customers any sales above the 40th percentile. As the Commission is well aware, such a protocol provides KCP&L with no incentive to increase OSS above that 40th percentile.

4. However, instead of analyzing the critical language in the Stipulation or quoting the record where the Commission bemoaned the lack of incentives to KCP&L, Staff has simply cited general statements in the Commission's Report & Order approving the Regulatory Plan in Case No. EO-2005-0329.

5. The language cited by Staff from the Report & Order at page 27 noted the Commission's agreement with witnesses from Staff and OPC "that the Stipulation contains provisions that facilitate lower rates for customers in the future that would not exist absent this Stipulation." That statement has no reference to OSS and is not linked to the concluding portion of the section entitled "The Proposed Regulatory Plan should result in lower rates," where OSS was discussed on pages 28-29 and where the language of Section III(B)(1)(j) was quoted. The Commission made no finding that the Stipulation, as amended on July 26, 2005, established a permanent prohibition on sharing mechanisms related to OSS.

6. Similarly, no such finding or statement is found in the Report & Order at pages 18-19 where Commission first discussed off-system sales. In the section entitled "Off-System

Sales" the Commission's review of the provisions in the Stipulation contains no suggestion that it established a permanent prohibition on sharing mechanisms related to OSS.

7. Staff also notes a passage from a concurring and dissenting opinion by Commissioner Gaw that was filed on August 19, 2005, several weeks after the Report & Order was issued on July 28. Commissioner Gaw did not specifically dissent with regard to any Commission finding regarding OSS. Indeed, the Report & Order recorded the Commission's vote at page 43 as 5-0 in favor, indicating that Commissioner Gaw concurred with his colleagues, "with concurring opinion to follow." Even if his later opinion is construed to be a dissent on the Commission's OSS findings, plainly it was a view that was rejected by the other four commissioners.

8. Since neither the Commission nor any reviewing Court has disapproved or changed the language of the Stipulation, it stands as approved in 2005, and there is clearly no prohibition on KCP&L introducing a sharing mechanism as part of an IEC in this case.

9. Additionally, Staff's assertion that "KCPL has collected, and continues to collect, the benefits of the upgrade of Iatan 1 and the construction of Iatan 2" is not accurate. See Staff Response at 3. Although KCP&L's rate base now reflects these investments, under the current rate structure ordered by the Commission in the Company's last rate case, OSS margin up to the expected 40th percentile (whether earned or not) is built into rates, and any OSS margin above that metric is ultimately returned to customers.

10. Indeed, it is more accurate to say that under the current structure OSS margin is *not* "considered in the determination of Missouri jurisdictional rates,"[1] as required by the Stipulation. Unless KCP&L reaches the 40th percentile, it must absorb the amount of that shortfall -- which is not reflected in rates.

[1] Sentence (c) of § III(B)(1)(j) of the Stipulation.

11. Because KCP&L cannot utilize a fuel adjustment clause until June 2015, the only method available to the Company to propose is some form of a tracker within an Interim Energy Charge that permits OSS margin to be reflected in rates, as contemplated by the Stipulation. The proposal submitted in the Direct Testimony of Mr. Rush attempts to do so by addressing the issues related to OSS that the Commission has faced since 2006. It presents a comprehensive method to address off-system sales, fuel and purchased power costs, as well as issues of risk and incentives raised by the Commission, Staff, and certain industrial customers in the last rate case.

II. A MOTION TO STRIKE IS IMPROPER AT THIS STAGE OF THE PROCEEDING

12. Neither Staff nor the Movants cite the legal basis for the Motion to Strike, which is presented to the Commission here at a very early stage of the proceeding. Missouri Rule of Civil Procedure 55.27(e) does permit a motion to strike from a pleading "any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." See Fed. R. Civ. P. 12(f). However, as Missouri law makes clear, where an issue raised by a party responds to matters that are relevant to the case, granting a motion to strike is not proper. State ex rel. St. Louis-San Francisco Ry. v. Pinnell, 605 S.W.2d 537, 538 (Mo. App. S.D. 1980).

13. Motions to strike "are viewed with disfavor and are infrequently granted." Lunsford v. United States, 570 F.2d 221, 229 (8th Cir. 1977). See American Home Assur. Co. v. Pope, 2005 WL 1312975 at *1 (W.D. Mo. 2005). The reason they are infrequently granted is that they impose a "drastic remedy" and are "often sought by the movant simply as a dilatory or harassing tactic." See 5C Wright & Miller, Federal Practice and Procedure § 1380 at 394 (3d ed. 2004).

14. None of the arguments advanced by the Movants or Staff asserts that the sharing mechanism is redundant, immaterial or impertinent to the issue of OSS or the ultimate decisions

to be made in this case. Indeed, over the past few general rate cases the subject of OSS margin and providing incentives to KCP&L to produce OSS margin has been a prominent topic.

15. There is simply no good reason at this early stage of the case to terminate the discussion of how OSS margin and related important issues should be managed. The Commission ought to have the benefit of the views of KCP&L and other parties regarding these significant matters. It should take all the evidence presented on these issues with the case, and decide the relevant issues of fact and law in its Report and Order.

WHEREFORE, Kansas City Power & Light Company requests that the Motion to Strike Pre-Filed Testimony and Reject Tariffs be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing was served upon counsel of record on this 3rd day of July, 2012.

/s/ Karl Zobrist
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