BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

CONCURRING OPINION OF COMMISSIONER TERRY M. JARRETT
IN THE REPORT AND ORDER

I believe that the final Report and Order in total allows for just and reasonable rates and the delivery of safe, adequate and reliable service while also providing an opportunity to earn a fair rate of return for the shareholder. However, there are three issues that I wish to address in my concurrence; (1) rate case expense, specifically attorney's fees (2) Demand Side Management ("DSM"), and (3) Low Income Weatherization.

Rate Case Expense – Attorneys Fees

In this case, nearly all of the rate case expenses were allowed. I agree with how rate case expenses were handled in this case. My concern is that, in this case, and in other prior Commission cases, some Commissioners suggested that utility shareholders should share in rate case expense because shareholders benefit from rate case expense. In this case, at least one party argued that a rate increase tariff filing allows the utility the opportunity to argue for a higher return on equity as well as the recovery of imprudent or unreasonable costs.

What these arguments fail to recognize is that both shareholders and ratepayers benefit from all kinds of spending by the utility. Ratepayers receive many benefits from expenses that

are born solely by the ratepayers (for example, executive bonus programs used to retain excellent managers typically are not included in rate base). Should this Commission require the ratepayers to pay a share of those expenses because they receive the benefit of a properly managed utility? I do not think any ratepayer advocate would argue for that. Rate case expense is a necessary cost of doing business because utilities have a legal obligation to provide safe, adequate and reliable service to ratepayers, and that meeting that obligation may only be achieved through the rate making process. When their costs rise, the utilities' only recourse is to come to the Commission and ask for a rate increase to recover those additional costs. Routinely Staff and other parties vigorously oppose such increases. Utilities must hire lawyers and experts to prove their case because utilities have the burden of proof. It has been my experience that utilities rarely, if ever, receive everything they ask for.

In a cost based regulatory system, like we have here in Missouri, recovery of prudently incurred costs by the utility ensures a balance of the regulatory paradigm. Singling out a cost for different rate treatment, where the same rationale for different treatment could be applied to any other cost, risks disincentivizing utilities to meet their statutory obligations. Because the rate increase proceeding is the only mechanism available to the utility for meeting its regulatory obligations, I believe it is inappropriate, in a cost based regulatory system, to disallow any prudently incurred rate case expenses.[1]

[1] I should note that I supported the Commission's Order to open an investigatory docket to look at this issue (Case No. AW-2011-0330). While I am open to receiving the result of the investigation, I am mindful that if this Commission were to decide that shareholders should not recover all prudently incurred rate case expenses, this Commission would be virtually alone in advancing this novel theory. I am also concerned that denying a utility the right to recover prudently incurred costs in a cost-based regulatory system like Missouri's would be confiscatory and thus unconstitutional.

Demand Side Management (DSM) Programs

In 2009 the Missouri Legislature passed Senate Bill 376, the "Missouri Efficiency Investment Act" ("MEEIA") which became law on August 28, 2009. The law makes clear the policy of this state with regard to demand-side investments which is that they be *valued* equal to traditional investments in supply and delivery infrastructure and that a utility be allowed recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs. Section 393.1075.3 RSMo Cum. Supp. 2009. This policy statement, made by the Missouri Legislature, does not set a requirement that a utility have demand side investments, rather it sets forth the manner in which those *voluntary investments* will be treated for valuation purposes.[2]

The Commission's Integrated Resource Planning ("IRP") Rule also does not mandate or require any particular demand side investment by a utility; rather, the IRP serves as a guide for future generation planning, and allows for flexibility on the part of the utility. Both MEEIA and the IRP maintain separation between the regulator, the legislature and the utility in the management of the utility, ensuring that neither the law nor the Commission's rules encroach on the province of the utilities' management.

This Order's proscription of a DSM program is a far cry from DSM being a balanced proposition as is described in the Report and Order.[3] The apparent concern about DSM was three fold; (1) how to treat the current DSM program, (2) how to handle any DSM program that arises between the completion of the Regulatory Plan and the effective date of rules under MEEIA ("Bridge") and (3) treatment for DSM after MEEIA rules are effective.

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[2] Report and Order, pg. 90; "The Commission concludes that the continuance of the DSM programs is in the public interest as shown by the customer participation and *clear policies of this state to encourage DSM programs.*" (Emphasis added).

[3] Witness Rush, Tr. 3565, lns. 15 – 18; "So we're -- what happens is, we are in a paradigm where we're trying to do something which we think is right, but essentially *we're hurting our shareholders for every dollar we spend.*" (Emphasis added).

The resolution of the Bridge in the Order is the issue that is of the most concern to me. The Order mandates that KCP&L and GMO spend an amount commensurate with the amounts it has previously spent in the DSM programs in the 2005 Agreement (KCP&L only), and in its last adopted preferred resource plan (both KCP&L and GMO). The General Assembly did not make DSM mandatory, but rather MEEIA sets out the mechanism for determining the *value* associated with DSM and the allowable recovery. Therefore, in this Order, the Commission has done what MEEIA does not do, which is to mandate participation in DSM. Because I support MEEIA, I am concerned that the Order purports to solve a problem – the Bridge period – by mandating DSM spending. This is a solution in search of a problem. KCP&L's voluntary decision to participate in DSM programs is not a problem this Commission should be concerned with resolving. That is a decision that should be left to the management of the utility.

Low-Income Weatherization Programs

The Commission orders KCP&L and GMO to make specific dollar contributions for low-income weatherization programs. My opinion here is similar to my Concurring Opinion in ER-2008-0318 regarding the Hot Weather Safety Program. I *do* support programs such as low income weatherization, and believe these programs serve an important function provided that the program includes a tracking mechanism or some other methodology for recovery of the costs associated with it. I fully support the need to consider options protecting low-income ratepayers, but without a linked cost recovery mechanism, such programs may not be efficient or meet the goals of the programs. Utilities might be more inclined to vigorously embrace and fund programs such as low-income weatherization if the Commission would ensure that costs incurred in those programs are recovered in a timely manner. To order a utility to fund such programs without these assurances is nothing more than forcing the Commission's social policy choices on

the utilities shareholders by choosing how *their* money should be spent, a position I believe is inappropriate.

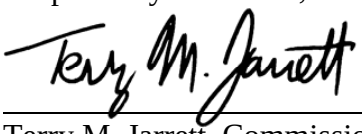
There is a balance that regulators can achieve in administering low-income programs, and that balance must not ignore the rights of the shareholders and ratepayers at the expense of the program's beneficiaries.

Conclusion

The Report and Order represents an enormous undertaking as this case not only embodied a rate increase request, but it also included the addition of new plant into service. The Iatan II plant should provide benefits to KCPL's ratepayers for many years to come. In a day and age where coal is a four letter word, the development, building and placing into service of a coal fired power plant is an achievement worth noting.

In all respects I reaffirm my support for the Report and Order in this case.

Respectfully submitted,



Terry M. Jarrett, Commissioner

Issued this 20th day of May, 2011.