PUBLIC VERSION

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	)	Case No. ER-2014-0370
a General Rate Increase for Electric Service.	)	

REPLY BRIEF OF KANSAS CITY POWER & LIGHT COMPANY

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Kansas City Power & Light Company ("KCP&L" or the "Company") submits this Reply Brief ("Brief") in accord with the Missouri Public Service Commission's ("Commission" or "PSC") Order Setting Procedural Schedule issued December 12, 2014.

I. INTRODUCTION

1. KCP&L understands and respects its customers' frustration with electric rate increases since 2007. But however understandable, this customer frustration cannot displace the necessity of maintaining KCP&L's financial integrity so that it can continue providing safe and reliable electric service that meets the expectations and demands of its customers. The reasons driving rate increases should not be forgotten. KCP&L's rate base has effectively doubled since 2006 (from slightly less than $1.3 billion to $2.58 billion) as it has deployed hundreds of millions of dollars in capital expenditures to construct a diverse array of long-lasting generation facilities that will serve customers' electricity needs for decades. See Ex. 114, Heidtbrink Direct at 4:17 through 8:8. KCP&L has also devoted considerable funds to help customers use electricity more efficiently and to assist customers with the installation of solar facilities that reduce their reliance on KCP&L's service. Id. at 8:9-22. As these activities have been occurring, government mandates[1] have consistently increased KCP&L's cost of providing electricity. Id. at 14-15. All the while, and for a variety of reasons[2], KCP&L's revenues – from both retail load growth and off-system sales – have stagnated. See Ex. 118, Ives Direct at 6:10-14; Ex. 134, Rush Direct at 10:12-13.

[1] From the Federal Energy Regulatory Commission ("FERC"), North American Electric Reliability Corporation ("NERC"), environmental regulators and tax assessment authorities, among others.

[2] Including the economic downturn in 2008, increased penetration of solar installations, Missouri Energy Efficiency Investment Act ("MEEIA") implementation, the cumulative impact of electric rate increases and dramatic reductions in the market price of natural gas, to name but a few.

2. It should be no surprise that KCP&L's electric rates have increased substantially. And while increased electric rates are difficult for customers, the factors driving those increased rates have also affected the Company and its shareholders. Dividends paid to shareholders continue to be lower today than they were in the fourth quarter of 2008, and KCP&L's Missouri earned return on equity has fallen well short of Commission-authorized levels since 2007. See Ex. 114, Heidtbrink Direct at 18:14-20; Ex. 121, Ives Surrebuttal at 28-30. Nevertheless, KCP&L has kept its eye on the ball as demonstrated in numerous areas, including:

- Implementing and proposing to expand the Economic Relief Pilot Program ("ERPP") to assist KCP&L customers having difficulty paying their electric bills (See Ex. 114, Heidtbrink Direct at 10:12 through 11:2);
- Paying close attention to customer satisfaction through surveys and numerous other metrics in addition to the deployment of innovative communication channels (See Ex. 149; KCP&L Further Response to Commissioner Request for Information at Attachment 4 filed herein on July 27, 2015);
- Retaining consistent focus on providing reliable electric service as recognized by PA Consulting awarding KCP&L the Reliability One award for having the best reliability performance in the Plains region for the eighth consecutive year in 2014 (See Ex. 114, Heidtbrink Direct at 9-10; Ex. 120, Ives Rebuttal at 4-5);
- Maintaining the engagement of employees by seeking ideas about how to improve operations directly from employees and providing feedback on those ideas (See Tr. 1315-1316); and

- Consistently investing in its facilities, infrastructure and systems to ensure that customer needs will be met efficiently and effectively now and in the future. See Ex. 114, Heidtbrink Direct at 4:17 through 8:8; Ex. 121, Ives Surrebuttal at 23.

In light of its consistent earnings shortfalls, it would have been understandable for the Company to reduce its focus on areas not directly related to improving its financial performance. But doing so would have been short-sighted and counter-productive in the long-run for both the Company and its customers. The Commission should take a similarly longer-range view in deciding the issues in this case and issue an order that allows for earnings that maintain KCP&L's financial integrity and its ability to continue meeting the needs of its customers and employees now and into the future. To do otherwise will send a signal that this Commission places little value on a sustainable long-term philosophy.

A. Response to OPC Regarding Customer Service

3. The Office of the Public Counsel's ("OPC") initial brief at page 6 includes two paragraphs on ratepayer comments at the local public hearings. OPC mentions three service related issues raised by specific customers at the public hearings. First, regarding budget billing, this customer question is now enrolled in KCP&L's budget average bill plan. See Ex. 121, Ives Surrebuttal at 65. The Company coached the customer service representative who spoke with the customer as well as all its customer service representatives to remind them of the Company's policy to permit customers whose spouse dies to remain on a budget billing plan when the service is transferred into their name. Id.

4. Regarding the customer who complained of facilities that were constructed near his house, the Company met with this customer both before the facilities were placed and after the public hearing. See Ex. 121, Ives Surrebuttal at 65. KCP&L has moved these facilities and this issue has been addressed to the customer's satisfaction.

5. Finally, regarding the voltage irregularity issues mentioned in the Marshall public hearing, the Company has contacted these customers and takes this issue very seriously. See Tr. 1305. KCP&L has taken steps to implement a solution. First, KCP&L personnel met with the quarry operator and reiterated that the need for start-up and shutdown of the quarry's motors needs to be staggered to mitigate voltage response. KCP&L also installed voltmeters on May 11, 2015 at various points along this circuit to assist in identifying a solution. The Company is evaluating potential system upgrades to address voltage fluctuations in a cost-effective manner. Id. at 66.

6. OPC claims that the complaints at the local public hearings are "indicative of a company that appears to have lost its focus on providing good customer service." See OPC Initial Brief at 6. To draw a broad negative inference from these limited issues is unfounded. Other customers at the public hearings, while they were not in favor of a rate increase, mentioned that KCP&L was a good corporate neighbor and that they had not had problems with customer service. See Tr. Vol. 3 at 30, 39.

7. The March 2015 customer survey provided to the Commission shows KCP&L's customer service is at a high level. KCP&L is ranked high in both customer service (89%) and overall job performance (89%). Over half of those surveyed were either "very satisfied" or "strongly approved" of KCP&L's electric service. A significant majority of customers believe that KCP&L is an honest company (79%) and is a good corporate citizen (76%). See Ex. 149, KCP&L Response to Commissioner Requests for Information at Attachment 3, pp. 1-2.

8. These results are consistent with the additional information supplied to the Commission by the Company on July 27, 2015. This filing also included the results of a survey

that compared KCP&L to other Missouri electric and gas utilities[3]. KCP&L matches or exceeds the performance of these companies in Company Image, Customer Service, Honesty and Price Satisfaction. Moreover, the July 27 filing also includes a press release from Cogent Reports which named KCP&L as the 14th Most Trusted Business Partner among the 59 largest electric utilities in the country.

9. These results show that the Company has in no way lost its focus on customer service and provides excellent customer service to its customers. While no Company can bat .1000 regarding its handling of every complaint, the Commission can be assured KCP&L reacts to customer service issues with a sense of urgency. See Tr. 1317.

II. COST OF CAPITAL

A. Return on Common Equity

1. Economic Growth

10. Most of the parties opposing the Company's recommended return on equity ("ROE") range of 10.0% to 10.6% ignore the clear evidence of improvements in the U.S. economy and the accompanying increases in interest rates and the decline in utility stock values. No party offering an ROE witness disputed their experts' explicit or general agreement with the list of eight metrics cited by KCP&L's Mr. Hevert of expanding macroeconomic growth and increased required returns. See Tr. 214-16 (Maravangepo); Tr. 237-39 (Reno); Tr. 268-70 (Gorman). Cf. Ex. 117, Hevert Surrebuttal at 47. While Commission Staff ("Staff") cited the U.S. Department of Energy's ("DOE") expert Ms. Reno as saying there were "not signs that the

[3] Ameren Missouri, The Empire District Electric Company, Laclede Gas.

economy is improving,"[4] she agreed at the evidentiary hearing "that growth is here and that interest rates are very likely to go up ("Yes that's true.")". See Tr. 240.

11. Staff's ROE witness agreed that Federal Reserve Board Chair Janet Yellen has stated that it "will be appropriate at some point this year to take the initial step to raise the federal funds rate target." See Tr. 214. This is consistent with Chair Yellen's testimony to the House Financial Services Committee on July 15, 2015: "We've gotten our economy in a much better state. … We are close to where we want to be and we now think the economy can not only tolerate but needs higher rates."[5] The Department of Commerce reported on July 30 that U.S. gross domestic product "increased at an annual rate of 2.3 percent in the second quarter of 2015," reflecting "an upturn in exports, an acceleration in PCE [personal consumption expenditures], a deceleration in imports, and an upturn in state and local government spending …."[6]

12. Staff recognizes that utility share prices are declining and that both Treasury and corporate bond yields have increased. See Staff Initial Brief at 31. Utility stocks as a group are down nearly 12% this year. An economic commentator noted that this "traditional preserve of widows and orphans became a widow maker this year" as a result of "the bond market's reaction to what the Federal Reserve might do later in 2015."[7] As Mr. Hevert testified, since the first quarter of 2015 and even since the Commission's decision in the Ameren rate case in late April,

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[4] Staff Initial Brief at 31.

[5] "Yellen Reinforced Liftoff Signal," Market News Int'l (July 16, 2015). See "New Limits on the Fed Pose Risks," § B, p. 1, The New York Times (July 16, 2015).

[6] News Release at 1-2, "National Income and Product Accounts, Gross Domestic Product: Second Quarter 2015 (Advance Estimate)," Bureau of Economic Affairs, U.S. Dep't of Commerce, No. BEA 15-35 (July 30, 2015).

[7] "More Utility Losses Won't be a Shocker," The Wall Street Journal (June 25, 2015).

the 30-year Treasury yield has increased by over 35 basis points, from 2.74% to 3.10%. See Ex. 117, Hevert Surrebuttal at 46-47.[8]

13. Despite Staff and the Midwest Energy Consumers' Group ("MECG") and Missouri Industrial Energy Consumers' ("MIEC") ("Industrials") argument that these economic trends are either exaggerated or built into the various experts' models,[9] this view does not take into consideration the most recent changes in the utility bond market. Whereas both Staff and the Industrials claim that utility bond yields are either the same or lower than they were in 2012, this is simply not true when measured on a more current basis. As Mr. Hevert explained in his surrebuttal filed on June 5, yields for Baa-rated securities were 4.82% on June 2, 2015, compared with 4.52% at the end of 2012. See Ex. 117, Hevert Surrebuttal at 13. At the hearing he testified that interest rates had not only moved up, but have "become more volatile." See Tr. 178. For utilities like KCP&L, this means that "as interest rates go up, the cost of equity goes up." See Tr. 179. ROE recommendations that fail to take into consideration these recently developing trends and their clear implications for KCP&L must be given little or no weight.

14. The parties advocating for a low ROE continue to criticize Mr. Hevert's growth rates. However, none of them discusses the fact that the expert providing the Commission with the lowest ROE recommendation (DOE's Ms. Reno at 9.0%) specifically relied upon a McKinsey & Company report that found a "long-term earnings growth of 5 percent" is "more reasonable, considering that long-term earnings growth for the market as a whole is unlikely to differ significantly from growth in GDP …." See Ex. 142, McKinsey on Finance Article at 4-5.

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[8] "Utilities Sector Rating: Underperform," www.schwab.com (June 11, 2015), citing lower profit margins, high fixed costs, accelerating economic growth and rising interest rates.
[9] Staff Initial Brief at 29-31; MIEC Initial Brief at 3.

The nominal growth rates cited by the article upon which Ms. Reno relied were 5% to 7%[10] which is entirely consistent with Mr. Hevert's Multi-Stage DCF growth rate of 5.65% and his 5.64% rate used in his Constant Growth DCF analysis. See Ex. 115, Hevert Direct at 19, 24.

15. One of the Industrial groups suggests that KCP&L is less risky than Ameren Missouri and should therefore receive a lower ROE than it was awarded by the Commission in April. See MECG Initial Brief at 33-35. However, the clear evidence in the record actually supports a contrary conclusion. In the Capital Asset Pricing Models ("CAPM") presented in this case, a Beta coefficient was used by each expert to assess the risk and volatility of the companies in the proxy groups, including KCP&L and its holding company, Great Plains Energy Incorporated ("GPE"). See Ex. 116, Hevert Rebuttal at Sch. RBH-15; Ex. 200, Staff Report at App. 2, Sch. 17; Ex. 550, Gorman Direct at 33-35 & Sch. MPG-15; Ex. 700, Reno Direct at 28-29 & Sch. MLR-8c.

16. The Beta coefficient is an element of the CAPM that measures the risk of a given stock relative to the risk of the overall market. See Ex. 115, Hevert Direct at 26; Ex. 550, Gorman Direct at 33 (beta is the "measure of the risk for stock"); Ex. 700, Reno Direct at 28 ("Beta measures the investment risk"). Consequently, "higher Beta coefficients indicate that the subject company's returns have been relatively volatile, and have moved in tandem with the overall market." See Ex. 115, Hevert Direct at 26. The higher the Beta, the greater the exposure of a company to market volatility.

17. The Value Line assessments of the 19 companies in the Combined Proxy Group show Ameren with a Beta of 0.75 and GPE with a riskier Beta of either 0.87 (Staff) or 0.85 (Hevert; Reno). While Mr. Gorman did not assess the Betas of Ameren or KCP&L/GPE, his

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[10] See Ex. 142, McKinsey on Finance Article at 4-5 & n. 9.

figures for the proxy companies that he did cite are identical to the Betas used by Mr. Hevert and Ms. Reno. See Ex. 550, Gorman Direct at Sch. MPG-15.

18. Of the 19 companies in the Combined Proxy Group, 14 have Betas at 0.80 or below, with Ameren at a 0.75. See Ex. 116, Hevert Rebuttal at Sch. RBH-15. GPE and two other companies had Value Line Betas of 0.85, with only two companies at a riskier 0.90. Id. Similarly, in Staff's report of Betas for the companies in its CAPM analysis, there were 14 companies listed, with OGE Energy Corp. at a Beta of 0.94 and GPE at 0.87. All other companies had Betas at 0.75 or below (including Ameren at 0.75) indicating lower risk. See Ex. 200, Staff Report at App. 2, Sch. 17 (Staff Report uses SNL data and Value Line adjustments).

19. Given this data reported by the cost of capital witnesses, there is no basis to conclude that KCP&L is less risky than Ameren Missouri. Rather, KCP&L's higher Beta coefficient shows that it is riskier and less insulated from market volatility and other economic trends than Ameren.

2. Experts

20. As to be expected, each of the parties sponsoring ROE witnesses opposed to the Company's recommendation praised the abilities and credentials of their experts. Staff reviewed the qualifications and recommended ROEs of each expert, properly observing that no methodology is prescribed by Missouri law and that the U.S. Constitution does not bind ratemaking to "any single formula or combination of formulas." See Staff Initial Brief at 15-16. However, Staff wisely relegated Mr. Maravangepo's use of a "rule of thumb" that yielded ROE's of 6.75% to 8.60% to a footnote in its brief. See Staff Initial Brief at 25 and n.118; Ex. 200, Staff Report at 55-56 (endorsing "[a] 'rule of thumb' method"). That concept violates long-standing Missouri Supreme Court principles "that neither the rate base nor the return to the

company is to be fixed by 'rule of thumb' or in the interest of expediency." State ex rel. Missouri Water Co. v. PSC, 308 S.W.2d 704, 718 (Mo. 1957).

21. Although Mr. Hevert's recommendation was not followed in the recent Ameren Missouri case, it was accepted in the recent Liberty Utilities case. See Report and Order at 26-29, In re Liberty Utilities Corp., No. GR-2014-0152 (Dec. 3, 2014) (awarding ROE of 10.0% based on Hevert range of 10.0-10.5%). In KCP&L's last rate case, the Commission rejected the recommendations of both the Company's ROE witness as well as Mr. Gorman who represented OPC. See Report and Order at 19-24, In re Kansas City Power & Light Co., No. ER-2012-0174 (2013).

22. Although the Industrials present Mr. Gorman as an unbiased expert who has represented a wide variety of entities, they do not name one utility that he has ever represented and his prefiled testimony is silent on the issue. Moreover, it must be recognized that Mr. Gorman has consistently opposed the ROE proposals of public utilities on behalf of large, blue chip industrial companies across the country over the past 15 years. See Order on Complaint at 4, 7,[11] Association of Businesses Advocating Tariff Equity v. Midcontinent Indep. System Operator, Inc., No. EL14-12-000, 148 FERC ¶ 61, 049 (Oct. 16, 2014); In re Pacific Power & Light Co., No. UE-131384 (Wash. Util. & Transp. Comm'n, 2014)[12]; Direct Testimony of Michael Gorman,[13] In re PacifiCorp, No. UE 246 (Ore. P.U.C., Oct. 10, 2012); Direct Testimony

[11] Mr. Gorman testified on behalf of large industrial customers, including the Illinois Industrial Energy Consumers (e.g., ExxonMobil, Caterpillar and Ford Motor Co.); Indiana Industrial Energy Consumers (e.g., General Motors, Eli Lilly and Alcoa); Minn. Large Industrial Group (e.g., ArcelorMittal USA, Enbridge Energy); and the Wis. Industrial Energy Group (e.g., Georgia-Pacific, Procter & Gamble).
[12] Mr. Gorman testified on behalf of Boise White Paper, LLC.
[13] Mr. Gorman testified on behalf of the Industrial Customers of Northwest Utilities (including Boeing, Microsoft and Shell Oil).

of Michael Gorman,[14] In re Special Contract with Anheuser-Busch, Inc., No. DW-11-018 (N.H. P.U.C., Mar. 31, 2011); Direct Testimony of Michael Gorman,[15] In re Tennessee-American Water Co., No. 08-00039 (Tenn. Reg. Auth., July 18, 2008); Michael Gorman Surrebuttal Testimony,[16] In re ARKLA's Rates, Charges and Tariffs, No. 01-243-U (Ark. P.S.C., July 2002); and Michael Gorman Direct Testimony,[17] In re PacifiCorp, No. 01-035-01 (Utah P.S.C., June 2001).

23. The other important observation about Mr. Gorman's ROE recommendations over the past four years compared with the recommendations of Staff is that the Gorman recommendations had been steadily declining, whereas Staff's were relatively flat from 2011 to 2013, but have risen 25 basis points in the past year and a half. See Ex. 144, Chart Comparing Staff and Gorman ROE Recommendations. Exhibit 144 shows that Staff has remained generally steady between 9.0% and 9.25%, whereas Mr. Gorman's recommendations have dropped 55 basis points:

MICHAEL P. GORMAN: ROE RECOMMENDATIONS

RATE CASES	GORMAN	STAFF	PTS.
2011 KCP&L (ER-2010-0355)	9.65%	9.0%	65 pts. above Staff
2012 Ameren Missouri (ER-2012-0166)	9.3%	9.0%	30 pts. above Staff
2012-13 KCP&L and GMO (ER-2012-0174/-0175)	9.3% (9.1-9.5)	9.0%	30 pts. above Staff (10-50 pts. above)
2014-15 Ameren Missouri (ER-2014-0258)	9.3%	9.25%	5 pts. above Staff
2014-15 KCP&L (ER-2014-0370)	9.1%	9.25%	15 pts. below Staff

24. Comparing Mr. Gorman's recommendations in this case with the recent Ameren Missouri case inexplicably shows that he was five points above the Staff recommendation in the

[14] Mr. Gorman testified on behalf of Anheuser-Busch, Inc.
[15] Mr. Gorman testified on behalf of the Chattanooga Manufacturers Association.
[16] Mr. Gorman testified on behalf of Arkansas Gas Consumers, Inc.
[17] Mr. Gorman testified on behalf of the Utah Industrial Energy Consumers (e.g., Kennecott Copper, Kimberly-Clark).

Ameren case, but 15 point below Staff in this case. While he attempted to justify this abrupt decline in his recommendations as based on market data, he had no explanation for why Staff was trending upward. See Tr. 279-80.

25. While Mr. Gorman relies on market data for his ROE recommendation, he disputes market data when it comes to the inverse relationship between interest rates and equity risk premiums. On this issue, he prefers to rely upon "academic literature." Mr. Hevert provided clear evidence that between 1986 and 2014, as Treasury yields declined, risk premiums have increased, which support higher ROEs. See Ex. 116, Hevert Rebuttal at 82-84. Using the high range of Mr. Gorman's risk premium at 6.40%, and adding his projected Treasury yield of 3.70% produces an ROE estimate of 10.10%, within KCP&L's recommended range. Id. at 84.

26. Mr. Gorman's disagreement with this analysis is based on his belief that such an inverse relationship does not "always" exist, citing academic studies regarding "periods in the '70s." See Tr. 277-78. It is odd that Mr. Gorman continues to rely on academic literature that analyzed data generated four decades ago during a unique period of hyper-inflation, and ignores relevant current data and trends that he does not specifically dispute regarding the Risk Premium Analysis. His failure to recognize this concept, which currently leads to higher ROEs, is particularly dogmatic, given this Commission's acceptance of the inverse relationship between interest rates and the equity risk premium in KCP&L's last rate case. See In re Kansas City Power & Light Co., Report and Order at 22, No. ER-2012-0174 (2013).[18]

[18] "Nevertheless, the Commission notes that, accounting more fully for the inverse relationship between risk premiums and interest rates, OPC's expert analysis [by Mr. Gorman] results in a range that includes the authorized ROE of 9.7%." This was 20 points higher than Mr. Gorman's recommended range of 9.1% to 9.5%.

3. ROE's Authorized by Other Public Utility Commissions

27. Several parties to this case argue that ROEs determined by other commissions have declined. See Staff Initial Brief at 28; MECG Initial Brief at 31-32; MIEC Initial Brief at 10-11. However, the facts show that authorized ROEs for vertically-integrated electric utilities for the past six quarters have ranged between 9.83% (second quarter of 2015) to 10.10% (second quarter of 2014), with the exception of the first quarter of 2015 at 9.64%. See Ex. 139, Summary of Authorized ROEs.

28. Based on the undisputed evidence about growth in the economy, rising interest rates and declining utility stock values, ROEs will certainly increase. This was seen in the recent decision of the West Virginia Public Service Commission where it authorized a 9.75% ROE for Appalachian Power Company and Wheeling Power Company. In re Appalachian Power Co., No. 14-1152-E-42T & 14-1151-E-D (W.Va. P.S.C., May 26, 2015).

29. This Commission's decision in the Ameren Missouri case of 9.53% was the lowest ROE issued during the second quarter of 2015. While other parties call for a similar ROE, if not lower, to be issued in this case, that would be a mistake. As noted above, KCP&L is a more risky enterprise than Ameren, as reported in the Betas of proxy group companies used in the experts' CAPM analyses. Moreover, with the clear indication of economic growth and other evidence that interest rates will rise and the cost of equity will increase, this Commission's ROE determination in the Ameren Missouri case is not a benchmark.

30. Several parties opposing KCP&L argue that if the Commission awards KCP&L a fuel adjustment clause ("FAC"), any ROE should be additionally diminished. See Staff Initial Brief at 4-5; MIEC Initial Brief at 4-5. This position has no merit since all of the companies in the proxy groups used by all of the experts already have FACs and other regulatory trackers and

mechanisms. See Ex. 116, Hevert Rebuttal at 92. Granting KCP&L an FAC would simply bring the Company in line with all of the other companies in the proxy groups.

31. It is instructive that in KCP&L's last rate case, which was coupled with that of its sister company KCP&L Greater Missouri Operations Company ("GMO"), no witness, including Mr. Gorman, advocated for a different or lower ROE for GMO because it was operating with an FAC. See Report and Order at 19-23, In re Kansas City Power & Light Co. and KCP&L Greater Missouri Operations Co., Nos. ER-2012-0174 & -0175 (2013). Mr. Gorman admitted that he drew no distinction or comparison between GMO having an FAC and KCP&L lacking one. See Tr. 287-88. Although the two companies stood side by side, one with and the other without an FAC, Mr. Gorman felt there was "no need to give it special attention." See Tr. 287.

32. However, in this case he and other witnesses have now decided to give the issue "special attention," advocating an extreme downward adjustment to KCP&L. Mr. Gorman specifically recommends an ROE below 9.10% down to his low-end estimate of 8.80%. See Ex. 551, Gorman Rebuttal at 5. Such an adjustment would drop the Industrials' recommendation below even that of Ms. Reno's recommendation of 9.0%, which she admitted to Commissioner Hall had never been granted by any commission that she was aware of. See Tr. 251-52.

33. The evidence is clear that without an FAC KCP&L has failed to earn its authorized return in recent years, achieving a 6.5% ROE in 2013 and only a 5.69% ROE in 2014. See Ex. 121, Ives Surrebuttal at 25. This equates to an earnings shortfall of 320 and 401 basis points, respectively, from the Company's authorized ROE of 9.7%.[19] Therefore, if no FAC is granted to KCP&L, a modest *upward* adjustment of 40 to 60 basis points would be appropriate, as Mr. Hevert demonstrated through his analysis of the Value Line Beta coefficients which

[19] Staff did not dispute this shortfall, noting that KCP&L's 2014 surveillance report showed a 6.1% ROE. See Tr. 1389 (C. Featherstone).

confirmed the higher risks that KCP&L would face compared with its peers. See Ex. 117, Hevert Surrebuttal at 45-46.[20]

34. In balancing the factors that are required to be applied to the economic data presented by the ROE witnesses, this Commission must do its best to set a rate that reflects both current and historical economic data, as well as reasonable projections of economic trends under the Supreme Court's Bluefield and Hope cases. In reaching that figure, both the interests of consumers as well as the financial integrity of KCP&L must be considered under both Section 393.130.1[21] regarding "just and reasonable" rates, as well as Section 386.610 regarding "substantial justice between patrons and public utilities."

35. In a candid discussion of where such a reasonable rate would be, Mr. Hevert, responding to Commissioner questions, stated that while the Commission's 9.53% in the Ameren Missouri case, "quite frankly, was low," he advised that 9.8% could be viewed "as a reasonable bench mark." See Tr. 171.

36. Understanding that this is an adversarial process, with experts employed by various parties to provide recommendations consistent with their clients' interests, KCP&L believes that some range below Mr. Hevert's low-end recommendation of 10.0% could be reasonable. However, in light of the average 9.83% of ROEs issued during the second quarter at 2015, and Mr. Hevert's reasonable benchmark of 9.8%, the return on equity set by the Commission in this case should not fall below 9.80%.

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[20] "As noted earlier, because FACs are so prevalent, implementing the structure would only make the Company more comparable to its peers, and therefore would not require a downward adjustment to the Cost of Equity. Rather, it is the lack of an FAC that requires an upward adjustment to the Cost of Equity." See Ex. 117, Hevert Surrebuttal at 46.

[21] All statutory references are to the Missouri Revised Statutes (2000), as amended, unless otherwise noted.

B. Capital Structure

37. The DOE was the only party to recommend a capital structure different from that recommended by KCP&L, with which Staff agreed and no other party opposed. See Staff Initial Brief at 4-5. DOE's initial post-hearing brief fails to discuss capital structure, apparently abandoning its position. See DOE Initial Brief at 2-3.

38. The Company agrees with Staff's recommendation that "the Commission should ignore Ms. Reno's preferences as to capital structure." See Staff Initial Brief at 5.

C. Cost of Debt

39. Similarly, Ms. Reno was the only one of the four cost of capital experts to recommend that short-term debt be included in the capital structure used to set rates. See Staff Initial Brief at 5. DOE's initial brief also fails to discuss this issue. See DOE Initial Brief at 2-3, 19.

40. The Company agrees with Staff's view that "Ms. Reno's explanation is not sufficient for the Commission to discard its long-established practice [of not including short-term debt in the capital structure to set rates] and the Commission should ignore it." See Staff Initial Brief at 6.

III. REGULATORY MECHANISMS: LAW AND POLICY

A. Introduction: Methodology and Theory vs. Impact

41. In their dogmatic opposition to any expanded use of regulatory mechanisms for KCP&L, Staff, OPC, MECG and MIEC (referred to in this section as "Company's opposition") make numerous assertions that are incorrect as a matter of fact, law, policy and various combinations thereof. Not only would they have the Commission ignore recent history, but these arguments by the Company's opposition would also have the Commission render its decision in complete disregard of foreseeable and significant cost increases during the period when rates set

in this case will be in effect. But unlike the Company's opposition, the Commission does not have the luxury of rendering its decision devoid of attention to both recent history and the foreseeable future.

42. The Company's opposition place blind faith in the use of the historical test year concept as it has been applied to electric utility rate setting in Missouri for many years. Their defense of this application of the historical test year is based solely on ideology and prioritizes methodology and theory (the use of a historical test year) over impact and results. As will be discussed in more detail below, the courts have made it very clear that impact – and not methodology or theory – is the controlling factor in determining the reasonableness of a rate setting order.[22]

43. The Company's opposition similarly overstates the benefits of regulatory lag as an economic incentive. In the process, Staff twists and misrepresents Dr. Overcast's testimony in this case by selectively quoting parts of his testimony. See Staff Initial Brief at 72. As Dr. Overcast made very clear in his rebuttal testimony, fuel and purchased power costs are impossible to predict with any degree of accuracy and are not susceptible to significant management control and thus there is no economic incentive to be served by regulatory lag for such costs. See Ex. 129, Overcast Rebuttal at 22-26. This view is shared both by now Senator Warren[23] and Alfred Kahn.[24] This is not at all inconsistent with Dr. Overcast's surrebuttal

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[22] Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 602 (U.S. 1944).

[23] See Ex. 129, Overcast Rebuttal at 26-27; Regulated Industries Automatic Cost of Service Adjustment Clauses: Do they Increase or Decrease Cost to the Consumer, Elizabeth Warren, Notre Dame Law Review, Volume 55, Issue 3, Article 2, p. 338.

testimony where he acknowledged that ". . . regulatory lag continues to be an effective incentive for a significant portion of costs in rates that management has some control and ability to create economic efficiency in these costs. Importantly, regulatory lag as an incentive is based on a portion of costs that KCP&L has some control over in terms of increasing productivity." See Ex. 130, Overcast Surrebuttal at 7:17-21. The Commission should therefore reject Staff's misrepresentation of Dr. Overcast's testimony.

44. Staff's further attempts to discredit Dr. Overcast (See Staff Initial Brief at 76-77) should be similarly rejected. His testimony and the white paper he authored (See Ex. 129, Overcast Rebuttal, Sch. HEO-2) provide a national perspective on regulatory mechanisms in use across the country for electric utilities with whom KCP&L competes for capital. He does so as an expert in utility regulatory policy with a Ph.D. in economics whose opinions are entirely consistent with those espoused by Alfred Kahn which are extolled by Staff. See Ex. 129, Overcast Rebuttal at Sch. HEO-1. He is not a lawyer versed in the details of Missouri regulatory history, and that it is not necessary d for his testimony on regulatory policy and economics to be persuasive. Ultimately, Dr. Overcast's work in this case demonstrates that the regulatory mechanisms proposed by KCP&L are modest relative to those used by electric utilities in other

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[24] "The differences between fuel costs and other costs are differences in degrees, only, an in the practicality of treating the former like the latter: but they are sufficient, in my judgment, to make the differences in the way we treat them almost inevitable. First a utility company has some greater degree of control over most of its other expenses; some it can delay, others it can compress by intensive effort, over time. In contrast, utilities have little control over the prices they are charged by fuel suppliers, and they cannot postpone incurring those expenses and continue to provide service. Second, the lapse of time before increases in the other costs get recognized in rates exerts a very salutary pressure on the companies to exert every possible means of holding down their costs. But fuel is simply too large a portion of the cost of generating electricity, and its price changes too violently and unpredictably for the companies to be able to bear that kind of lag in its recognition in price." Statement of Alfred E. Kahn, Chairman, New York State Public Service Commission on Fuel and Gas Adjustment Clause, Before the Senate Committee on Corporations, Authorities and Public Utilities, Buffalo, New York, October 22, 1975.

jurisdictions and necessary in light of the Company's operating environment and guiding principles of regulatory policy and economics.

B. KCP&L's Operating Environment Has Changed

45. KCP&L does not dispute that – many years ago – the historical test year concept resulted in electric utility rates that were just and reasonable to both KCP&L and its Missouri customers. But KCP&L's operating environment has changed. Gone are the days when load grew 2-3% each and every year; KCP&L's load growth forecast for 2016-2018 is 0.9%, 0.2% and 0.2%, respectively. See Ex. 118, Ives Direct at 6:9-21; Ex. 121, Ives Surrebuttal at 35, fn. 1. The historical load growth of 2-3% annually offset regulatory lag and was vital for the Company to have an opportunity to earn its authorized ROE.

46. Gone also are the days when annual depreciation expense built into rates exceeded capital expenditures; KCP&L's forecast for 2015-2019 shows that capital expenditures will greatly exceed the rate allowance for depreciation expense. See Ex. 121, Ives Surrebuttal at 23:1-22. Now, instead of robust annual load growth, KCP&L is experiencing robust annual increases in governmentally mandated expenses, including:

- Southwest Power Pool, Inc. ("SPP") transmission expense (driven by transmission build-out pursuant to FERC policy mandates) (See Ex. 107, Carlson Rebuttal at 8);
- Property tax expenses (driven by plant-in-service growth that drives net operating income growth resulting from rate increases, but which lag the rate increases by 12 months or more) (See Ex. 113, Hardesty Surrebuttal at 5-6); and

- Critical Infrastructure Protection ("CIP")/cyber-security Operations and Maintenance ("O&M") expenses (driven by NERC requirements, among other sources) (See Ex. 132, Phelps-Roper Rebuttal at 3).

The combination of flat load growth, capital expenditures exceeding the annual depreciation expense rate allowance and dramatic expense increases resulting from governmental mandates has caused KCP&L's actual Missouri jurisdictional earnings to fall well short of its Commission-authorized ROE since rates were last set in January 2013. Specifically, for 2013, KCP&L's actual Missouri jurisdictional ROE was 6.5% which, when compared to its Missouri Commission-authorized ROE, represents an earnings shortfall of almost $34 million. See Ex. 118, Ives Direct at 7-8; Ex. 121, Ives Surrebuttal at 32. For 2014, the earnings shortfall grew, with the actual ROE being 5.69% or more than $34 million less than the Commission-authorized ROE of 9.7%. See Ex. 121, Ives Surrebuttal at 25. For 2015, the earnings shortfall was expected to be slightly higher than 2014. See Ex. 121, Ives Surrebuttal at 10.

C. KCP&L's Historical Earnings Shortfalls Have not Been Seriously Disputed

47. No party has offered any legitimate or material dispute regarding KCP&L's evidence regarding historical earnings shortfalls. KCP&L included evidence of its 2013 earnings shortfall in its direct testimony filed on October 30, 2014 and no party has disputed that evidence. And Staff concedes that KCP&L's Missouri jurisdictional ROE for 2014 was 6.1% - a full 360 basis points below the 9.7% ROE authorized by this Commission in January of 2013. See Staff Initial Brief at 80-81. Staff witness Hyneman's testimony regarding KCP&L's historical earnings levels should be disregarded because he on total company financial data from U.S. Securities and Exchange Commission reports which include financial results from the

higher earning Kansas operations[25] his conclusions are irrelevant to assessing the results of Missouri regulation and rate setting on KCP&L's Missouri jurisdictional earnings. See Ex. 121, Ives Surrebuttal at 25-27. Although Staff witness Hyneman insinuates that the financial results of Kansas operations dragged down total Company results, the evidence clearly shows otherwise because the actual Kansas ROE for 2013 was ** ** whereas the Missouri ROE for 2013 was 6.5%. Id. at 26-27.

48. Staff witness Hyneman's assertion that earnings surveillance reports are unreliable should also be disregarded. See Staff Initial Brief at 84-85. If earnings surveillance reports are as unreliable as Mr. Hyneman asserts, then why did Staff insist that KCP&L continue to provide them in paragraph H on page 3 of the Partial Non-Unanimous Stipulation and Agreement as to Certain Issues filed on July 1, 2015? KCP&L is not attempting to base rate case adjustments on earnings surveillance reports. Rather, KCP&L is using those earning surveillance reports to show that setting rates based purely on historical test year information, without regulatory mechanisms in place, is not producing actual earnings for KCP&L anywhere close to the Commission-authorized level. The earnings surveillance reports unequivocally demonstrate that refinements are needed in the current environment.

49. Moreover, the use of financial information as typically adjusted during rate cases would be worthless for assessing the actual impact of the Commission's rate orders. The Company's commodity and service providers do not send "normalized" invoices to the Company. Commodity and service providers send actual bills to collect actual expense and KCP&L must pay the actual amounts due. A "normalized" level of revenues cannot be deposited in a bank account and relied upon to pay bills. It seems beyond self-evident, but actual

[25] KCP&L's Kansas utility operations comprise approximately 45% of KCP&L's regulated utility operations.

financial results can only be based upon actual revenues, expenses, and rate base. Any suggestion to the contrary by the Company's opposition must be rejected. MECG Initial Brief at 10-11. Further, it is these actual results that the historical test year is used to forecast. Such large differences between KCP&L's authorized and earned ROE demonstrate conclusively that the historical test year has failed to adequately forecast cost of service that provides KCP&L a reasonable opportunity to earn the Commission-authorized return in the absence of mechanisms typically found in other jurisdictions that are designed to account for the most volatile and least controllable costs in the rate year.

50. Staff also argues against the use of regulatory mechanisms by pointing to positive or utility-beneficial regulatory lag that occurred during 2013 and 2014. For example, Staff points to headcount reductions, financing cost reductions and DOE spent nuclear fuel fees reductions that occurred after the true-up period in KCP&L's last rate case. See Staff Initial Brief at 73. KCP&L readily admits that these cost savings occurred, but the impact of these cost savings have been reflected in the results of operations in 2013 and 2014. KCP&L's Missouri earnings shortfalls discussed earlier would have been larger without KCP&L's significant cost control efforts. Moreover, when rates are set in this case, they will reflect those lowered costs resulting from the Company's cost control efforts. Additionally, savings due to headcount reductions and significant process improvement initiatives simply cannot be replicated year after year and therefore cannot be reasonably forecast to offset the significant expense increases that will occur in areas such as SPP transmission expenses, property taxes and CIP/cyber-security O&M expenses. See Ex. 121, Ives Surrebuttal at 8-9.

51. Staff and MECG also level general, overbroad and unsubstantiated allegations about KCP&L's supposedly excessive Administrative and General ("A&G") costs. See Staff

Initial Brief at 87-88; MECG Initial Brief at 9 and 95-102. If KCP&L is seeking to recover costs in excess of those reasonable and necessary to provide electric service, then Staff and MECG should propose to disallow the specific costs at issue on the basis of reliable evidence that such costs are not reasonable or necessary to provide electric service. This record certainly reflects the fact that neither Staff nor MECG is particularly shy about recommending cost disallowances. But Staff and MECG have provided no such evidence that any specific KCP&L A&G costs are higher than reasonable or necessary. Instead, they rely on high level comparisons of FERC Form 1 data, an approach this Commission has previously rejected, stating:

> As was demonstrated in this case, there is really no way to determine with any degree of certainty that one company is more efficient than another. MGE attempted to do so by comparing its annual operating and maintenance expense to that of other Missouri gas companies. However, as Staff pointed out, operating and maintenance expenses are subject to many variables and are not a good basis for determining management efficiency. Although none of the evidence presented actually demonstrates that MGE is any more or less efficient than other gas companies, there was a lot of evidence filed on that question and its presentation took up a good deal of hearing time. The Commission does not wish to encourage a flood of indeterminate and ultimately pointless testimony on the question of management efficiency in future rate cases (citations omitted). <u>In re Missouri Gas Energy</u>, Case No. GR-2004-0209, Report and Order, p. 28.

The wisdom of that Commission finding is borne out in this record. For example, KCP&L leases its headquarters building, with lease payments recorded to A&G expense, whereas both Ameren and Empire own their headquarters buildings so they record no lease expense for their headquarters buildings to A&G expense. <u>See</u> Ex. 105, Bresette Rebuttal at 8. This is but one obvious example of Staff and MECG's apple-to-oranges comparison; others exist. For example, KCP&L recorded solar rebate costs as A&G expense, but neither Empire nor Westar incurred solar rebate costs during the period in question. <u>Id.</u> at 9. The Commission should reject Staff and MECG's non-specific, overbroad and unsubstantiated claims regarding KCP&L's A&G expenses.

52. Staff and MECG also point to total shareholder return ("TSR") information to support their argument against KCP&L's recent earnings shortfalls. See MECG Initial Brief at 12; Staff Initial Brief at 79. But when KCP&L's TSR performance is put in the context of its peers[26], KCP&L actually lags behind its peers. See Ex. 121, Ives Surrebuttal at 21-22. More to the point, TSR is driven by a variety of factors much broader than the earnings performance of KCP&L's Missouri electric utility operations. Id. at 21. As such TSR does not really provide any meaningful insight into whether this Commission's rate orders have achieved the intended results for KCP&L. And that is precisely why KCP&L's actual ROE is relevant. In every rate case that does not settle, this Commission decides what ROE to use to set rates. Taking an after-the-fact look, or a back-cast, at the ROE actually earned after rates have been set is the most meaningful way to assess whether a rate order of this Commission has achieved the intended results. As such, Staff and MECG's arguments regarding TSR should be dismissed.

D. KCP&L's Earnings Shortfalls Forecasted to Result in the Future – in the Absence of Regulatory Recognition of Future Cost Increases in Specific Areas – Have Not Been Seriously Disputed

53. KCP&L has also proven that the earnings shortfalls it has experienced since its last Missouri rate order will continue after rates are set in this case unless the Commission adopts regulatory mechanisms which recognize cost increases in the areas of fuel and purchased power (including SPP transmission expenses), property taxes and CIP/cyber-security O&M expenses. Specifically, if the rate allowance for these items is based solely on historical information and no FAC, tracker mechanisms or forecasted expense rate allowances are authorized for these items, KCP&L's actual Missouri jurisdictional ROE will fall short of its Commission-authorized ROE by 130 basis points (or approximately $16.4 million) in the first year of new rates, solely due to

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[26] I.e., electric utilities with whom it must compete for capital.

the impact of these items. See Ex. 120, Ives Rebuttal at 10-11. In year 2, the Missouri jurisdictional earnings shortfall grows to 170 basis points (or $21.4 million), again solely due to the impact of these items. Id. at 10-12. There is no reasonable likelihood that the Company can identify and implement savings of this magnitude so quickly. As should be obvious to the Commission, cost savings cannot be relied upon like an infinite well. See Ex. 130, Overcast Surrebuttal at 2. It is also undisputed that significant cost increases are likely to occur in other parts of KCP&L's operation. For example, because capital expenditures are forecasted to exceed the annual rate allowance for depreciation expense, rate base will continue to grow, accompanied by growth in depreciation expense and financing cost requirements. See Ex. 121, Ives Surrebuttal at 23:1-23. Employee compensation is also likely to grow, as it has consistently over the past five years across the utility industry. See Ex. 130, Overcast Surrebuttal at 5. Additionally, electric transmission prices and distribution prices have increased, on average, by approximately 5% and 2% respectively, on an annual basis over the period 2010-2014. Id. at 6. While KCP&L will certainly continue pursuing cost control efforts in the future as it has in the past, in light of broad upward cost pressures as discussed above, it is unreasonable to expect that such efforts can offset – to any significant degree – the substantial cost increases that will occur regarding property taxes, CIP/cyber-security O&M expenses and fuel and purchased power (including SPP transmission expenses).

E. The Regulatory Mechanisms Requested By KCP&L Are Necessary for KCP&L to Have a Reasonable Opportunity to Achieve Its Commission-Authorized ROE

54. In the seminal case of Bluefield Waterworks & Improvement Co. v. Public Service Comm'n of W. Va., 262 U.S. 679 (1923), the United States Supreme Court held that "[A] public utility is **entitled to such rates as will permit it to earn a return** on the value of the property which it employs for the convenience of the public **equal to that generally being made**

at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties ....."
Id. at 692 (emphasis added). The evidence in this record establishes that in 2013, KCP&L's actual Missouri jurisdictional ROE was 6.5% whereas the actual ROE of its sister utilities were much higher: GMO's actual ROE for 2013 was 9.76% and the actual ROE for KCP&L's Kansas operations was ** **. See Ex. 118, Ives Direct at 8-9. Ameren Missouri's ROE for 2013 was 10.34%, according to the per-book surveillance report and was 9.71% for 2014. See Report and Order at 26-27, In re Union Elec. Co., Case No. ER-2014-0258 (Apr. 29, 2015). It cannot be credibly argued that KCP&L's Missouri utility operations are materially less risky than those of GMO, KCP&L's Kansas utility operations or Ameren Missouri. Clearly the rates set by this Commission for KCP&L in 2013 did not allow it to earn a return equal to that generally being made on investments in other business undertakings which are attended by corresponding risks and uncertainties.

55. For the ROE authorized by the Commission in this proceeding to have any legitimacy whatsoever, KCP&L must have a reasonable opportunity to actually earn it. As the United States Supreme Court has stated, ". . . it is important that there be enough revenue not only **for operating expenses**, but also for the capital costs of the business. These include service on the debt and dividends on the stock." Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) (emphasis added). Paraphrasing Bluefield, KCP&L's rates must permit it to earn a return equal to that generally being made by similar businesses. This is not a concept foreign to Missouri utility regulation. "There can be no doubt but that the Company and its stockholders have a constitutional right to a fair and reasonable return upon their investments." State ex rel. Missouri Public Service Co. v. Fraas, 627 S.W.2d 882, 886 (Mo.App. W.D. 1981).

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Since the earned ROE is residual after all operating expenses and debt payments have been made, the admonitions of the United States Supreme Court in Hope and Bluefield and those of Justice Brandeis in Southwestern Bell related to recovery of expenses is fundamental to earning the authorized ROE.[27]

56. But in urging the Commission to disregard evidence of KCP&L's past earnings shortfalls and evidence showing those earnings shortfalls will continue in the future absent regulatory recognition of foreseeable future cost increases (whether through an FAC, trackers or rate allowances based on forecasted expenses), the Company's opposition ask the Commission to ignore this fundamental constitutional requirement. Ironically, they ask that this evidence be ignored in defense of the historical test year concept as applied in Missouri and the supposed benefits it provides by consideration of all relevant factors. See Staff Initial Brief at 68-69; OPC Initial Brief at 45.

57. In fact, foreseeable future changes in cost of service are relevant factors that must be considered by the Commission in this general rate case. As the Fraas court stated: "[I]t is no answer to the foregoing duty to say that a forecast as to future inflation is merely speculative. Despite the hazard, the Commission must make an intelligent forecast with respect to the future period for which it is setting the rate; rate making is by necessity a predictive science." Fraas at 886.

58. Nor is it sufficient to say that the historical test year as applied in Missouri is adequate to use for setting rates now because it has been adequate in the past. See Staff Initial Brief at 69-72. Missouri courts have long recognized that the Commission must have flexibility to set rates that are appropriate under conditions then prevailing. "Each case must be determined

[27] See State ex rel. Southwestern Bell Tel. Co. v. PSC, 262 U.S. 276, 291 (1923).

upon its own facts and, oftentimes, varying factors that may be peculiarly relevant to a reasoned determination of the issue of 'just and reasonable' rates under conditions then existing. It follows as a matter of course that neither the rate base nor the return to the company is to be fixed by 'rule of thumb' or in the interest of expediency." State ex rel. Missouri Water Co. v. PSC, 308 S.W.2d 704, 718 (Mo. 1957).

59. To be clear, KCP&L is not arguing that it must always earn its authorized ROE for rates set by this Commission to be reasonable. However, if the effect of the rate order is that the rates set by the Commission provide KCP&L with no reasonable opportunity to achieve its authorized ROE, then the impact of such rate order and rates would, by definition, be unreasonable. The evidence in this record demonstrates that if foreseeable future cost increases are not afforded regulatory recognition in this rate order (whether through an FAC, trackers or rate allowances based on forecast expenses), then KCP&L's earnings in the first year after these new rates take effect will fall 130 basis points short of whatever ROE the Commission authorizes in this case due solely to the impact of fuel and purchased power costs (including SPP transmission expenses), property taxes and CIP/cyber-security O&M expenses. See Ex. 121, Ives Surrebuttal at 10-12. This earnings shortfall would be a real impact of the rate order in the first year of new rates, and an impact that is well outside the "zone of reasonableness" recognized by Missouri courts. State ex rel. OPC v. PSC, 367 S.W.3d 91, 100 (Mo.App. 2012). Because such a rate order would result in an ROE so far short of the return determined by the Commission as necessary to compensate KCP&L's equity holders for the risks associated with their investment in KCP&L, its impact would be confiscatory in violation of the 14th amendment of the United States Constitution. Just as significant, this impact would represent a continuation of KCP&L's chronic under-earnings relative to its Commission-authorized ROE which

diminishes the Company's financial integrity and its ability to attract capital on reasonable terms under a variety of market conditions. See Ex. 117, Hevert Surrebuttal at 10-11.

IV. FUEL ADJUSTMENT CLAUSE

A. KCP&L's FAC Request Does Not Violate the Stipulation and Agreement in Case No. EO-2005-0329 ("Comprehensive Energy Plan" or "CEP Stipulation")

60. A verb followed by an infinitive verb is a routine construction in the English language. It is called a verb-phrase.[28] Here are examples:

- She asked to leave.
- They expect to arrive early.
- He promised to stop smoking.
- I wish to stay.
- We invited them to join us.
- The Company will not seek to utilize an FAC.

61. Opponents of the Company want the Commission to dissect the verb-phrase "seek to utilize" rendering "to utilize" meaningless surplus words. They argue that KCP&L wants to ignore the word "seek." This is not true as discussed infra. The Company asks the Commission to look at the entire verb-phrase and determine its meaning based on the plain and ordinary meaning of those words as a single grammatical unit. The plain and ordinary meaning affects the Company's procedural rights such that the Company may not use those procedural rights to effectuate the use of an FAC before June 1, 2015.

62. This verb-phrase construction – "seek to utilize" - requires that the infinitive verb ("to utilize") give purpose to the verb ("seek"). Mr. Poston himself acknowledged the need to

[28] http://grammar.about.com/od/tz/g/verbphraseterm.htm

identify what was prohibited from being sought: "I think that you need to have something there explaining what it was that they weren't allowed to seek, and so they can't allowed [sic] to seek to use one of those …." See Tr. at 79 (Poston). As Commissioner Hall pointed out in his questioning of Mr. Poston in the evidentiary hearing on June 15, 2015, the Company opponents' favored interpretation could have easily have been achieved: "-- you can go right to the noun [an FAC or mechanism], but that's okay." See Tr. at 79 (Hall). But this is not what the CEP Stipulation does, nor was it the intent of the parties.

63. Company opponents are reduced to the bizarre to find purpose for the words "to utilize" under their interpretation. "[T]he word 'utilize' was a necessary part of the phrase 'prior to June 1, 2015, it will not seek to utilize any mechanism' because company does not seek a mechanism, they use a mechanism." See OPC Initial Brief at 17. To be clear, in the unlikely event there is confusion: KCP&L is seeking an ***FAC mechanism*** in this case. Its use will be according to the terms the Commission deems just and reasonable and will not begin until well beyond June 1, 2015.

1. How Should the Commission Analyze This Issue?

64. The Commission must look to the plain and ordinary meaning of the words. See KCP&L Initial Brief at 47-48 (discussing the plain and ordinary meaning of words and when ambiguity exists). Then, if the Commission determines that the language is ambiguous, the Commission should go to the "four-corners" of the agreement to find guidance. Id. If neither the plain and ordinary meaning of the words, nor the agreement itself provides sufficient clues as to the parties' intent, only then should the Commission go to extrinsic evidence to discern the parties' intent. Id. This also appears to be the position of Staff which the Company agrees with. See Tr. 53.

2. Plain and Ordinary Meaning of "Seek to Utilize"

65. The verb-phrase "seek to utilize" has a plain and ordinary meaning of seeking or trying to use or utilize an FAC mechanism. KCP&L was prohibited from trying to use a future unknown process in such a way as to put an FAC into effect prior to June 1, 2015. OPC seems to believe that by italicizing or underlining the word "seek," it magically dissects the verb-phrase "seek to utilize." See OPC Initial Brief at 15-16. OPC also incorrectly claims that KCP&L wants to ignore the word "seek." Id. at 16.

66. KCP&L does not ask the Commission to disregard or ignore the word "seek." Whatever the future process was going to be (unknown before the passage of S.B. 179) the word "seek" indicates that KCP&L would not attempt to use that unknown process in such a way as to utilize an FAC before June 1, 2015. This does not ignore the word "seek"; to the contrary, it recognizes a future process and puts limits on what the Company can do within that process whatever it may be.

67. Compare this to the opponents' argument that the prohibition was meant to entirely thwart the Company's use of any of the possible process (still unknown at that time) in their totality until June 1, 2015, or even more broadly to engage in *any conceivable action* before June 1, 2015 which ultimately could lead to the authorization of an FAC. See Tr. at 1564 (Poston). Under this erroneous interpretation -- which entirely erases the words "to utilize" from the CEP Stipulation -- any act by the Company's management, even *internal* to the Company, related to an FAC prior to June 1, 2015 could be considered a violation of the CEP Stipulation. This interpretation fails not only because it erases actual words, but because it prohibits actions which at the time were unknown and would have rendered the prohibition so open-ended as to be absurd.

68. The Company's position is that it was prohibited from trying to use an FAC prior to June 1, 2015 regardless of the procedural processes unknown at the time of the negotiations. See KCP&L Initial Brief at 37; Tr. at 1251 (Fischer). This interpretation contemplates an identifiable, specific and known action within the context of nascent legislation involving an unknown process. Centering the prohibition on the use of the FAC accommodates every procedural possibility (and accompanying time-frame) from a self-effectuating FAC process, to one requiring a notice filing and requiring Commission approval. The Company's interpretation does not eliminate the word "seek"; rather it expressly puts a limit on the Company's use of those possible processes whatever they may be. The Company did not violate this provision in this case, because it was understood (post-passage of S.B. 179) that this rate case would put the utilization of an FAC well-beyond June 1, 2015.

3. Four Corners of the Document

69. Should the Commission find the language ambiguous, the four corners of the CEP Stipulation informs the Commission that the prohibition was not based on a filing with the Commission. The sentence after the disputed "seek to utilize" sentence reads: In exchange for this commitment, the Signatory Parties agree that if KCP&L proposes an Interim Energy Charge ("IEC") in a general rate case filed before June 1, 2015 in accordance with the following parameters, they will not assert that such proposal constitutes retroactive ratemaking or fails to consider all relevant factors." In the sentence directly after the disputed "seek to utilize" provision, the Signatory Parties did in explicit and clear language refer to a proposal which is exactly what the Company opponents claim was intended via different language in the preceding sentence. This is illogical.

70. Attempting to shoehorn the four corners of the CEP Stipulation to support it, Staff conflates an Interim Energy Charge ("IEC") (incorrectly proclaiming it to be a "mechanism")

and an FAC. See Staff Initial Brief at 39. An IEC is not a "mechanism" -- as generally understood to be an adjustable rate mechanism under Section 386.266. An IEC is a rate that is set by the Commission via a rate case. It is not a mechanism that allows for certain costs to be passed-through outside of a rate case. "Under KCPL's interpretation, KCPL could have filed for an IEC or a FAC eleven months prior to June 1, 2015, thereby rendering the date in the second sentence meaningless…" Id. This is false on several levels. The language of the CEP Stipulation is clear: In consideration for not trying to use an FAC mechanism prior to June 1, 2015, should KCP&L file an IEC rate case, assuming certain parameters are followed, the Signatory Parties will not oppose the request on grounds of retroactive or single-issue ratemaking. The CEP Stipulation not only prohibits the filing of an FAC before June 1, 2015, but it does not prohibit the filing of an IEC before June 1, 2015. Staff's attempt to conflate these terms fails.

71. Staff asserts a special qualifying relationship between the first and second sentences of the paragraph: "The second sentence qualifies the first sentence by allowing KCPL to do something it could not do under the first sentence." Id. There is nothing in the language of the CEP Stipulation which suggests that the second sentence qualifies the first sentence. They are dealing with fundamentally different statutory concepts. The only thing linking these two sentences is "In exchange for this commitment …."

72. Throughout the CEP Stipulation, the parties refer to the filing of rate cases at the Commission and use filing dates to demarcate certain rights within it. This process was well known to the parties and could have easily been put in the CEP Stipulation with regard to an FAC if it had been the parties' intention. But it was not the intention of the Signatory Parties.

The intention of the parties is reflected in the plain and ordinary meaning of "seek to utilize" an FAC.

4. Extrinsic Evidence

73. All the parties, including KCP&L, have provided testimony and other evidence which they argue shows the intentions of the parties. See KCP&L Initial Brief at 41; Staff Initial Brief at 41; OPC Initial Brief at 17. Both sides can find instances where someone casually referred to "seek" or "use" and then claimed that this shows the intention of an entity. The Company does not believe this is particularly helpful to the Commission. The Company cannot divine the intentions of the other parties beyond the plain and ordinary meaning of the words in the CEP Stipulation, so much as to suggest their interpretation is newly expressed. Likewise, OPC's bold claim that "KCPL Changed its Interpretation" based on one line of oral testimony given by Mr. Tim Rush is absurd. See OPC Initial Brief at 17. Likewise, OPC's claim that the Form 8-K filed by GPE provides some evidence of KCP&L's intent boils down, once again, to OPC's belief in the magical power of underlining words. Id. at 18. It reads: "The duration of each interim energy charge will not exceed two years. KCP&L will not seek prior to June 1, 2015, to utilize any mechanism authorized …." Id. (emphasis by OPC). The relevant word "utilize," of course, was not underlined.

5. Conclusion

74. The Company knows what its intentions were and it knows the actual words in the CEP Stipulation support what its intentions were. Likewise, the four corners of the document support the plain and ordinary meaning of the words "seek to utilize." The Commission should deny OPC/MIEC's motion to strike and find that KCP&L did not violate the CEP Stipulation.

B. Has KCP&L Met the Criteria for the Commission to Authorize It to Have a FAC?

75. Although Staff agrees that KCP&L has shown that the magnitude of its fuel costs would support an FAC, it disputes that the Company's fuel costs are beyond management's control and that they are volatile. See Staff Initial Brief at 44. Although it is true that KCP&L has skilled employees who manage its fuel procurement and hedging practices, no party has disputed that only about 20% of KCP&L's coal requirements over the next four years are under contract, that coal prices have seen 15% swings in the past two years, and that coal freight rates change on a quarterly basis, while coal prices change monthly. See Ex. 104, Blunk Rebuttal at 9, 24–26; Ex. 103, Blunk Direct at 21–22 (volatility of coal and natural gas prices).

76. Staff's single-minded focus on fuel prices misapprehends the multitude of elements and factors comprising and affecting fuel and purchased power costs. Contrary to Staff's over-simplification, fuel costs consist of many components beyond fuel price, including: average heat rates for plants burning the fuel; Btu content of the fuel; fuel transportation; plant availability; the impact of the SPP IM on costs and transmission constraints. Volatility is guaranteed as load grows because the generation mix is fixed and dispatched optimally so that hourly marginal cost will increase as load grows based on plant heat rate curves. See Ex. 129, Overcast Rebuttal at 11-12.

77. MECG relies on the testimony of Michael Brosch regarding KCP&L's coal supply and contractual arrangements which are either out of date or inaccurate. Mr. Brosch's statement that 95% of KCP&L's 2015 coal requirements were under contract at the end of 2014 (See MECG Initial Brief at 49) is essentially irrelevant to a FAC that is designed to operate for just three months of 2015 but perhaps all of 2016 through most of 2019, Mr. Blunk testified at the evidentiary hearing that from 2016 through 2019, which is the relevant time period, KCP&L

has "about 20 percent of our commitment under contract," and that "the other 80 percent is still exposed to market." See Tr. 1617–18. Notably, MECG concedes that volatility in purchased power and off-system sales would justify an FAC or, alternatively, a tracking mechanism. See MECG Initial Brief at 56.

78. OPC similarly fails to address the specifics of Mr. Blunk's testimony, relying upon generalities. See OPC Initial Brief at 21–23. OPC is the only party that argues off-system sales should not be analyzed with purchased power costs and that they are not a lawful basis for granting an FAC under Section 386.266.1. Id. at 24. This is contrary to the Commission's regulations which provide that it "shall determine whether or not to reflect off-system sales revenues and associated costs in a FAC in the general rate proceeding that establishes, continues or modifies the FAC." See 4 CSR 240-20.090(1)(C).

79. Also unique among the parties, OPC proposes additional FAC criteria, including a requirement that a utility should be granted an FAC "only if it is *necessary* to provide a utility with sufficient opportunity to earn a fair return on equity." See OPC Initial Brief at 21; Ex. 309, Mantle Direct at 3 (emphasis added). Such a requirement is contrary to Section 386.266.4 which requires that an FAC be "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity." However, regardless of OPC's incorrect statement of the law, an FAC is necessary for KCP&L to have a sufficient opportunity to earn its authorized ROE.

80. Several parties also suggest that transmission costs are not volatile and do not justify being included in an FAC. See Staff Initial Brief at 45; OPC Initial Brief at 25; MECG Initial Brief at 57. Separating the issue of the magnitude, volatility and control over transmissions costs from the legal issue of whether such costs may flow through an FAC (addressed by MIEC Initial Brief at 19-23), the evidence clearly shows that transmission costs

are significant, out of KCP&L's control, and volatile, varying substantially from year to year. See Ex. 107, Carlson Rebuttal at 8 (network transmission project costs allocated to retail load, alone rose from $6.46 million in 2011 to $24.48 million in 2014, and are expected to rise to $42.8 million in 2017). This Commission has already found that rising costs after the test period (which is certain to occur for the SPP transmission fees paid by KCP&L) is a sound basis for approving an FAC. See Report and Order at 67, In re: Ameren Missouri, No. ER-2008-0318 (Jan. 27, 2009). KCP&L will address these issues in detail in Subsections IV.D.4., 5. and 11. below.

C. Should the Commission Authorize KCP&L to Have a FAC?

81. None of those opposing KCP&L's FAC request offer any additional reasons under this subsection, except for OPC (joined passively by CCM) which desires additional explanations of what would be included in such a mechanism. See OPC Initial Brief at 30–31. As KCP&L has made clear, it is willing to abide by the language contained in the FAC currently used by its sister company GMO, but objects to any additional requirements. See Ex. 135, Rush Rebuttal at 16.

D. How Should the FAC be Structured?

1. What Percentage?

82. Only Staff and OPC oppose the Company's proposal to structure the FAC so that 100% of the cost decreases are passed through to customers, as well as 100% of any increases. Staff, relying on the Commission's orders authorizing FACs to other utilities, endorses a 95/5 allocation method. See Staff Initial Brief at 47–49. However, Staff's citation to these other orders simply confirms both Staff's and the Commission's inability to define or identify what kind of "incentive" is provided to those utilities. The fact is that a 95/5 allocation serves as no incentive whatsoever and simply punishes either the utility or the customer, depending on the

cost shifts, without any finding of imprudence or mismanagement. See Ex. 129, Overcast Rebuttal at 32-33. Disallowance of prudently incurred costs is not an incentive but a penalty which impairs the Company's opportunity to earn its authorized return. The real incentive for the Company to control fuel and purchased power costs, as recognized by the New York commission in an order issued during Alfred Kahn's tenure, is the fact that failure to do so will result in higher costs borne by customers with consequential reductions in usage and earnings. See Commission Opinion No. 75-5 at 7, Case No. 26756 (N.Y. P.S.C., Mar. 21, 1975). As such, the 100% approach recommended by KCP&L is more reasonable and fair to both customers and the Company. That view is also supported by Dr. Kahn in his statement noted above.

83. Staff also endorsed the counter-intuitive conclusion that "after-the-fact prudence reviews alone are insufficient to assure" that a utility will "take reasonable steps" to manage its fuel and purchased power costs. See Staff Initial Brief at 48. These findings are contrary to Section 386.266.4(4) which explicitly provides that imprudent costs detected during prudence reviews are to be refunded to customers with interest at the utility's short-term borrowing rate. This provision provides a clear economic incentive to utilities to see that fuel costs are properly managed. Lack of faith in Staff's ability to conduct prudence reviews is not only misplaced, it is inconsistent with the law. In light of this statutorily required prudence review, if the Commission is inclined to adopt a 95/5 allocation, then it should order deferral of the 5% of cost increases that would go unrecovered during annual operation of the FAC and permit recovery of those cost increases if, after prudence review, no disallowance is adopted by final order of the Commission. There is absolutely no basis to disallow recovery of prudently incurred costs and doing so violates the Supreme Court mandate that all prudent operating expenses by recovered in rates.

84. In contrast to Staff, OPC favors a radical departure from current FAC practices, advocating a 50/50 allocation proposal that has never been implemented by any regulatory commission. See OPC Initial Brief at 31–32. Ms. Mantle acknowledged this during the evidentiary hearing. See Tr. 1731–32. OPC's proposal is patently unfair to both customers and the Company, has never been used by any other regulatory commission and must be rejected.

2. Identification of Costs

85. The Company and Staff agree that FAC costs and revenue should be identified by FERC Uniform System of Accounts ("USOA") designations. See Staff Initial Brief at 49; KCP&L Initial Brief at 48–49. Only OPC favors an FAC that would include internal corporate accounting and resource codes of KCP&L or other descriptions not governed by the USOA. See OPC Initial Brief at 33.

86. There is simply no persuasive reason to go beyond the standards that the Commission has used in approving FACs for other electric utilities. OPC's proposal to require the use of internal corporate accounting resource codes or other non-USOA sub-account designations in an FAC would interfere with the Company's ability to administer its accounting systems and to manage its costs. Moreover, KCP&L does not object to "[u]sing words to describe what is included or excluded from the FERC account definition." See Ex. 105, Bresette Rebuttal at 13–14. OPC's recommendation should be rejected.

3. FAC Tariff Sheets and Accounts, Subaccounts, Etc.

87. As discussed above, KCP&L's FAC tariff sheets should only reflect the accounts and numbers of the USOA, as well as a description of the items they contain. Only OPC argues for more "resource codes and cost/revenue descriptions," none of which are required by the Commission's regulations in 4 CSR 240-20.090 or 240-3.161(5)–(8). See OPC Initial Brief at 34.

88. OPC's request for more detail beyond that required of Missouri's other electric utilities is unnecessary and should not be required.

4. SPP Transmission Fees

89. All fees charged by SPP to KCP&L under SPP Schedules 1, 1-A, 11 and 12 should be included in the FAC at a level of 100%. Staff contends that it would be appropriate to include 7.3% of these expenses based upon the Commission's orders in recent Ameren Missouri and Empire decisions. See Staff Initial Brief at 50. In this regard, Staff also relies upon the testimony of MIEC and OPC witness James Dauphinais. Id.; Ex. 557, Dauphinais Rebuttal at 10–14. MECG apparently agrees. See MECG Initial Brief at 62. This is also true for OPC. See OPC Initial Brief at 34–35.

90. None of the parties opposing an FAC discuss the particular schedules under which SPP charges transmission costs, and none has offered specific reasons why SPP Schedule 1 costs should not be flowed through an FAC. These costs relate to "Scheduling, System Control and Dispatch Service." See Ex. 155, SPP Schedule 1. Indeed, Staff does not oppose the collection in an FAC (or a tracker, if an FAC were not approved) of Schedule 1 charges because they relate to KCP&L's need "to buy and sell energy to meet the needs of its customers." See Ex. 208 Eaves Rebuttal at 9:15–16; Tr. 1681.

91. Therefore, apart from the discussion relating to Schedules 1-A, 11 and 12, the Commission must allow charges under Schedule 1 to be included in an FAC. These are charges that relate to the Company's moving power through, out of or within SPP. While Staff recognizes this important distinction, MECG does not. Although MECG recognizes that Schedule 1 charges for Scheduling, System Control and Dispatch Services are collected in USOA Account 561.4, it apparently seeks their complete exclusion but offers no specific reason

to support its position. See MECG Initial Brief at 59, 62. Clearly, these costs should be recovered in an FAC.

92. Schedule 11 charges relating to the construction of new transmission projects should also be subject to full recovery under an FAC. These costs are volatile and mounting. The Network costs of such projects alone are likely to reach $35 million in 2015, $37.5 million in 2016, and nearly $43 million in 2017. See Ex. 107, Carlson Rebuttal at 8. Total SPP base plan funding costs, as MIEC's Mr. Dauphinais pointed out in reference to Mr. Rush's testimony, are much higher, reaching $60 million by 2018. See Tr. 1767-69, 1980-81; Ex. 134 Rush Direct at 20 & Sch. TMR-5. Mr. Dauphinais erroneously minimizes the volatility of transmission costs by comparing SPP's projected costs with the actual costs paid by KCP&L. See Tr. 1779 ("looking at the forecast and how they change"). However, what concerns KCP&L is the *actual* costs that it pays. Mr. Carlson's measure of the variance in actual costs for SPP base plan transmission expenses from 2007 to 2014 is quite high at 120%. See Ex. 107, Carlson Rebuttal at 6. Moreover, comparing KCP&L's costs with those of other utilities fails to consider KCP&L's position. See Ex. 108, Carlson Surrebuttal at 6–7 (KCP&L charges are more significant and volatile on a per MWh basis than Ameren Missouri). Charges relating to projects are assessed to KCP&L under FERC Account 565, with revenues derived from such transmission projects allocated to the Company in Account 456.1. See Ex. 159, USOA References. Because the charges and revenues reflected in these accounts relate to system reliability, they are clearly appropriate for an FAC.

5. Transmission Sales and Purchases in FAC

93. MIEC argues that the reality of SPP's Integrated Marketplace ("IM") should be ignored, and that KCP&L should be allowed to include only 7.3% of its SPP transmission charges in an FAC. See MIEC Initial Brief at 22-23. This argument ignores the undisputed fact

that KCP&L sells all of the power it generates into the IM and purchases 100% of the electricity it sells to its retail customers from the IM. See Ex. 107, Carlson Rebuttal at 9, 12-14; Ex. 108, Carlson Surrebuttal at 1-5. Contrary to MIEC, there is no such thing as "self-generated power" in the SPP market. See MIEC Initial Brief at 22. Even MIEC's witness recognizes that "KCPL offers energy production from all of its generation facilities into the SPP market and clears all of its load in the SPP market."[29]

94. Given the reality that 100% of KCP&L's generation is sold into the SPP market and 100% purchased from that market, all SPP expenses and revenues related to those individual sales and purchases of transmission service must be included in the FAC. In this regard, it is important to recognize that power is sold for one price at a generator settlement location, but is purchased at a load settlement location at a different price. See Ex. 106, Bresette Surrebuttal at 2. Because KCP&L receives statements for both the sales and purchases that these transmission transactions represent, they do not net to zero. Netting under FERC Order 668 only occurs at the end of the month to close the accounting period. Id. at 2:21 - 4:17.

95. Section 386.266.1 provides for the recovery in an FAC of transportation costs related to purchased power. Because both the Commission and the Court of Appeals have found that the statute's reference to "transportation" includes transmission costs, all SPP transmission expenses should be included in the FAC. In re Union Elec. Co., 422 S.W.3d 358, 366-67 (Mo. App. 2013). See Ex. 107, Carlson Rebuttal at 15.

96. This is especially appropriate because KCP&L's transmission expenses related to infrastructure upgrades have increased dramatically in recent years and, as noted above, will continue to increase under Schedule 11 after new rates take effect. If 92.7% of the Company's

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[29] Ex. 557, Dauphinais Rebuttal at 10.

transmission expenses are excluded from the FAC, how will these costs be recovered? It is clear that load growth will not cover these expenses, and even annual rate case filings will not allow the Company to fully recover such increases because shortfalls experienced during the test year will be lost. As Mr. Blunk testified, excluding Schedule 11 costs (or Schedule 1 costs, discussed below) from an FAC would improperly divorce the value of transmission upgrades and other SPP operations that benefit customers by lowering total power production costs from the costs to achieve them. See Ex. 104, Blunk Rebuttal at 12-14. Under these facts, fairness dictates that the Commission permit KCP&L to include all SPP transmission expenses in an FAC.

6. SPP Schedule 1-A and 12

97. Schedule 1-A charges relate to Tariff Administration Service provided by SPP. Some of these charges are collected in Account 561.4, which relates to Scheduling, System Control and Dispatching Services costs. Although not specifically discussed by Staff, Account 561.4 costs are charges that Staff has previously agreed are appropriate because they relate to the Company's need to buy and sell energy for its customers. See Ex. 208, Eaves Rebuttal at 9.

98. As far as Schedule 1-A charges allocated to other USOA accounts, KCP&L has no discretion in whether to pay these charges, and has little ability to influence their size. See Ex. 135, Rush Rebuttal at 13–14; Ex. 107, Carlson Rebuttal at 4–5, 14. SPP requires all transmission customers like KCP&L to purchase Schedule 1-A service which directly relates to KCP&L serving its load, as well as selling power off-system. See Ex. 206, Bresette Surrebuttal at 6; Ex. 107, Carlson Rebuttal at 10. As such, it is an energy-based charge related to the transmission of purchased power and appropriate for inclusion in an FAC. See Ex. 107, Carlson Rebuttal at 10-12.

99. Similarly, the charges under Schedule 12 assessed by FERC are beyond KCP&L's control. Because they relate entirely to KCP&L's membership in SPP, which this Commission has approved, these charges are appropriate for inclusion in the FAC.

7. Cross-Hedging Practices

100. Only Staff and OPC oppose these charges being included in an FAC. See Staff Initial Brief at 51; OPC Initial Brief at 36. However, the only objection is that because cross-hedging is not currently employed by KCP&L, it should not be permitted in the future. As Mr. Blunk discussed at the hearing, power hedging strategies require the ability to cross-hedge when necessary. See Tr. 1601–02, 1609–11. Because no party opposed hedging costs, the Commission should not approve hedging costs while prohibiting recovery of cross-hedging costs, which should remain a tool available to the Company when necessary to mitigate market risk. See Tr. 1613–14.

8. SO_2 Amortizations, Bio Fuels and Propane

101. Although Staff and OPC object to some or all of these charges, part of their objection relates to the description of the charges. See Staff Initial Brief at 52–53; OPC Initial Brief at 36–37. As stated in its initial brief, KCP&L does not oppose an appropriate description of charges such as the railroad accessorial charges or other descriptions that would enable the FAC to operate efficiently and be audited appropriately. See KCP&L Initial Brief at 54; Ex. 104, Blunk Rebuttal at 34.

102. Regarding OPC's opposition to SO_2 amortizations, KCP&L believes they should be included because they are collected in FERC Account 509, which specifically includes "the cost of allowances expensed concurrent with the monthly emission of sulfur dioxide." See Ex. 135, Rush Rebuttal at 26; 18 C.F.R., Part 101, USOA § 509, Allowances.

9. Other Costs and Revenues

103. Only OPC opposes an FAC that includes costs and revenues that KCP&L is not currently incurring or receiving. See OPC Initial Brief at 37–38. OPC has apparently reversed course from Ms. Mantle's surrebuttal where she recognized that both recoveries and expenses for unanticipated future events or activities be considered. See Ex. 311, Mantle Surrebuttal at 29–30. Staff takes no position on the issue. See Staff Initial Brief at 53.

104. There is simply no reason to include only revenues derived from unknown activities in the FAC, but to exclude the costs to achieve such revenues, which would clearly result in an unfair situation. See Ex. 104, Blunk Rebuttal at 11. The FAC should include all costs and revenues relating to net fuel and purchased power costs, whether they are being incurred presently or in the future. Unknown and unanticipated items like insurance recoveries and settlement proceeds, including both expenses and revenues, should be included in the FAC.

10. Language Regarding Penalties

105. Since any penalties assessed against the Company by either FERC or NERC are neither fuel nor purchased power costs, including transportation, under Section 386.266.1, there is no need to include exclusionary language in the FAC tariff. See Ex. 135, Rush Rebuttal at 18–19.

106. The concerns raised by Staff and OPC in their briefs are unfounded. See Staff Initial Brief at 53; OPC Initial Brief at 38.

11. Miscellaneous SPP IM Charges

107. Both Staff and OPC oppose the inclusion of the term "miscellaneous charges" as vague and open-ended. See Staff Initial Brief at 53; OPC Initial Brief at 39. However, such charges would specifically relate to those contained in tariffs filed by SPP which are approved by FERC and therefore carry the full force and effect of law.

108. Excluding the phrase "miscellaneous charges" from the FAC would prohibit KCP&L from collecting new charges assessed by SPP as part of the IM and deprive KCP&L of an opportunity to recover its costs in a timely fashion. The original language proposed by the Company in its FAC tariff should be approved by the Commission.

12. Off-System Sales Revenue ("OSSR")

109. Both Staff and OPC advocate a narrow definition of off-system sales revenues ("OSSR") that does not reflect the operations of SPP's IM. See Staff Initial Brief at 53; OPC Initial Brief at 39.

110. All of KCP&L's energy transactions are recorded either as generator settlements to Account 447 or as load settlements recorded to Account 555. All of the transactions recorded in these accounts should be subject to the FAC. See KCP&L Initial Brief at 56–57. Because KCP&L pays SPP for all of its purchases and, in return, receives payment from SPP for all of its sales, these costs should be included in an FAC because they all relate to the purchasing of power, including its transmission ("transportation") under Section 386.266.1.

111. This is consistent with Commission's prior decision in Ameren Missouri's last rate case, which was upheld by the Court of Appeals. See In re Union Elec. Co., 422 S.W.3d 358, 366–67 (Mo. App. W.D. 2013). Therefore, the tariff language proposed by KCP&L regarding off-system sales should be included.[30]

13. "J" Component

112. Both Staff and OPC oppose a definition of the J component that reflects KCP&L's jurisdictional allocation calculation between Missouri and Kansas. However, there is no need to overcomplicate the definition, which Mr. Rush appropriately sets forth in his rebuttal.

[30] The only item that would not be included in Account 447 revenues would be sales in Account 447.1 to municipalities. See KCP&L Initial Brief at 56, ¶ 164.

See Ex. 135, Rush Rebuttal at 20. That definition adequately accounts for any differences between Kansas and Missouri, and should be accepted without further modification.

14. Base Factor

113. As KCP&L's witness Tim Rush indicated at the evidentiary hearing, a Base Factor could be included on the FAC formula sheet in addition to the FAC tariff as a whole if so determined by the Commission. See Tr. 1630–31.

15. Voltage Levels

114. KCP&L, Staff and OPC support two voltage levels related to primary and secondary service. See Ex. 135, Rush Rebuttal at 21; Staff Initial Brief at 56-57; Ex. 200, Staff Report at 200–01; OPC Initial Brief at 40–41. Only MECG proposes four voltage levels in the FAC. See MECG Initial Brief at 62–64.

115. As OPC and Staff have indicated, the Company's loss study does not contain all the data necessary to calculate additional voltage level factors. See Staff Initial Brief at 56-57; OPC Initial Brief at 40-41. Any change in voltage level adjustment factors should be reserved for a future KCP&L rate case.

16. Recovery Periods

116. As stated in KCP&L's initial post-hearing brief, it agrees with OPC that Accumulation Periods in an FAC may be changed to January through June, and to July through December. See KCP&L Initial Brief at 58.

117. The Company also agrees that Recovery Periods should run from October through September and from April through March. See Ex. 135, Rush Rebuttal at 7.

17. Cost Revenues and Accumulation Period

118. KCP&L, Staff and OPC agree that FAC costs and revenues should be allocated consistent with the allocation methodology that has been agreed upon. See KCP&L Initial Brief at 58; Staff Initial Brief at 58; OPC Initial Brief at 41–42.

E. FAC Reporting Requirements

119. Staff has proposed that KCP&L provide or have available the information that is described in its Rate Design and Class Cost-of-Service Report. See Staff Initial Brief at 58-59; Ex. 202, Staff Report (Rate Design) at 42. KCP&L agrees to work with Staff to provide such information, but opposes any formal FAC reporting requirement that expands what its sister company GMO currently provides to Staff. See Ex. 135, Rush Rebuttal at 16.

F. Addition of Cost and Revenue Types

120. Staff appears to agree with KCP&L that the Company should be allowed to add revenue and cost types to the FAC between rate cases as long as they are consistent with the process of recording those costs and expenses in the USOA protocols established by FERC. See Staff Initial Brief at 59-60; KCP&L Initial Brief at 59.

121. To the extent that OPC proposes additional detail beyond the USOA accounting system, KCP&L opposes that request. See OPC Initial Brief at 42. The reasons why such additional disclosures are unnecessary and would overcomplicate the accounting process, particularly if internal resource and accounting codes of KCP&L are required, are set forth above in Section IV (D)(2).

G. KCP&L v. GMO Disclosure

122. Only MECG and OPC ask that KCP&L specifically differentiate itself from GMO in its customer bills. It's unclear what they seek of GMO, which is not a party to this case. See

OPC Initial Brief at 42-43; MECG Initial Brief at 64-66. Staff takes no position on this issue. See Staff Initial Brief at 60.

123. Neither MECG nor OPC has presented the Commission with any evidence of customer confusion. The best that could be offered was unsupported contentions by MECG counsel, and Commissioner Kenney's statement that he directed his staff to determine whether he was a KCP&L or GMO customer, which they were able to do. See Tr. 1586-87. Both KCP&L and GMO provide accurate information on a regular basis to make customers aware of the specific tariffs under which they are taking service. See Ex. 135, Rush Rebuttal at 16. The rate codes currently appearing on KCP&L and GMO bills enable customers to identify their utility and the tariff that governs that service. Id. at 64.

124. Mr. Rush testified that "KCP&L" is used as the brand name for both utilities, and that the Company's customer service personnel are able to distinguish between KCP&L and GMO immediately when a customer calls. See Tr. 1632-33, 1636-39. As with the Commission's findings in the complaint case filed by Staff several years ago, there is no credible evidence in the record that the use of the KCP&L brand by both the Company and GMO has caused any confusion among customers. See Order Granting Motion for Summary Determination and Dismissing Complaint at 9, Staff v. KCP&L Greater Mo. Operations Co., No. EC-2009-0430 (2009).

V. TRANSMISSION FEES EXPENSE

A. What Level of Transmission Fee Expenses Should the Commission Recognize in KCP&L's Revenue Requirement?

125. Staff agrees that $54,027,871 (total Company) is the level of annualized transmission fee expenses as of the May 31, 2015 true-up, excluding other adjustments. This figure does not include amounts related to Independence Power & Light ("IPL") becoming a

transmission owner member of SPP and the resulting increase in transmission costs charged to KCP&L by SPP. See Ex. 166, Klote True-Up Rebuttal at 2; Ex. 165, Klote True-Up Direct at 3-4.

126. While the Company is challenging these increased transmission costs in a FERC proceeding, these costs must be included in the Company's transmission fee expenses in this case. Both the revenue and expense related to IPL's SPP membership are reflected in the true-up evidence. See Ex. 165, Klote True-Up Direct at 3-4; Ex. 164, Ives True-Up Rebuttal at 3-11. Since rates reflecting these costs became effective retroactive to June 1, 2015 upon FERC's acceptance of the SPP tariff revisions on June 12, 2015, it is appropriate that the revenues and expenses related to the IPL membership in SPP be included in KCP&L's tariffs and be included in the FAC.

127. If the IPL-related transmission expenses are not included in the FAC, they should be part of a transmission tracker issued in this case. See Ex. 164, Ives True-Up Rebuttal at 8-11; Ex. 166, Klote True-Up Rebuttal at 3. Any adjustments in these revenues and expenses as a result of a future FERC order would be reflected in the FAC or in a tracker. See Ex. 165, Klote True-Up Direct at 3-4.

128. As it has in other cases, the Commission should recognize the effect of these changes in revenues and expenses that occurred immediately after the True-up period. See Ex. 164, Ives True-Up Rebuttal at 9-10.

129. If an FAC or tracker treatment is not authorized for transmission expenses, the May 31, 2015 base level of these expenses should be increased by $5 million (which includes the impact of IPL-related SPP transmission expense) with provision for customer credits (including short-term interest) if actual transmission expense falls short of the rate allowance but that if

actual transmission expense exceeds the rate allowance then shareholders absorb the overage. See Ex. 136, Rush Surrebuttal at 8-9; Ex. 166, Klote True-Up Rebuttal at 3.

B. Should a Tracker be Implemented for KCP&L's Future Transmission Fee Expenses that Varies from the Level of Transmission Fees Expense the Commission Recognizes in KCP&L's Revenue Requirement and that KCP&L will not Recover Through a FAC?

130. Several parties oppose including transmission expenses in a tracker, with Staff presenting a procedural objection that KCP&L's transmission tracker proposal was improperly presented in rebuttal testimony. However, as Staff's direct case opposed KCP&L's request for an FAC, it was appropriate for the Company to respond in rebuttal with an alternative proposal for the Commission's consideration, consistent with other tracker proposals that the KCP&L had presented in direct testimony. See Ex. 200, Staff Report at 189-200; Ex. 118, Ives Direct at 26-30 (proposing cyber-security/CIPS, property tax, and vegetation management trackers); Ex. 134, Rush Direct at 27-34 (same proposals).

131. The Commission's rules clearly provide that where all parties have filed direct testimony, "rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case." See 4 CSR 240-2.130 (7)(B). That is what the Company did in proposing a transmission tracker. See Ex. 120, Ives Rebuttal at 14-15.

132. A tracker is appropriate for SPP transmission expenses because they are significant, beyond the control of management, and for the next five-to-seven years will continue to increase in unprecedented and significant amounts such that historical levels will not be reasonably representative of actual SPP transmission expense incurred by KCP&L when the rates set in this case will be in effect. Account 565 charges, where KCP&L's SPP transmission expenses are recorded, will reach $59 million this year and exceed $69 million in 2016 and 2017. See Ex. 108, Carlson Surrebuttal at 6-7. Overall, SPP base plan funding costs will continue to

soar through 2022 in the mid-$60 million range and then gradually decline. See Ex. 134, Rush Direct at Sch. TMR-5.

133. The transmission tracker opponents do not dispute these figures. Rather, they raise a variety of legal issues to claim that trackers are either unlawful or bad regulatory policy. See Staff Initial Brief at 61-63; MECG Initial Brief at 69-82.

134. Clearly, this Commission has the authority to prescribe uniform methods of financial accounts and records, and to regulate how revenues and expenses shall be entered, charged or credited under Section 393.140(4) and 393.140(8). State ex rel. Office of Public Counsel v. PSC, 858 S.W.2d 806, 809 (Mo. App. W.D. 1993). The USOA adopted by FERC has been accepted by this Commission as the appropriate method for Missouri's electric utilities to record their financial information. See 4 CSR 240-20.030. Pursuant to the USOA, the Commission has explicit authority to designate accounts of regulatory-created assets and liabilities for deferral until a future determination as to recovery or disallowance in a general rate case. See Ex. 160 (Account 182.3 [other regulatory assets]; Account 254 [other regulatory liabilities]; § 31: Definition of Regulatory Assets and Liabilities). Because any such expenses are deferred to a future rate case, the granting of a tracker does not affect a utility's revenue requirement.

135. Under this authority, there is no requirement for a finding that the deferred expenses are "rare," "volatile" or "extraordinary." While KCP&L firmly contends that the recent substantial increases in SPP transmission fees, including charges related to the SPP IM, have no precedent in history and are both significant and exceptional, the decision to grant an accounting deferral under a tracker does not require a finding that circumstances are extreme, rare or extraordinary. The decision is committed to the judgment of the Commission as it

reviews the evidence showing that these new and substantial expenses are beyond KCP&L's control, are imposed by an external party, and are exceptional. See Commonwealth Edison Co. v. Illinois Commerce Comm'n, 937 N.E.2d 685, 710 (Ill. App. 2010).

136. Because a tracker does not set rates and does not pass through costs to customers, it is a far more modest tool than has been approved by the Commission and the courts in other circumstances. The recovery mechanisms that allow the collection of amounts reflecting changes in local taxes or changes in the cost of natural gas have a direct impact on customers, whereas a tracker does not. See State ex rel. Hotel Continental v. Burton, 324 S.W.2d 75, 79-82 (Mo. 1960); State ex rel. Midwest Gas Users' Ass'n v. PSC, 976 S.W.2d 470, 479-81 (Mo. App. W.D. 1998).

137. The Commission's own rule regarding the availability of a tracking mechanism for costs related to vegetation management show that trackers do not require a threshold finding that a cost is extraordinary, rare or unforeseeable. See 4 CSR 240-23.030 (10). Moreover, a transmission tracker would require an accounting for both revenues and expenses as charged by or received from SPP in both FERC Account 565 (charges) and in Account 456.1 (revenues). See Ex. 159, USOA Accounts.

138. Here again, the historical test year must be supplemented by regulatory mechanisms that reflect future economic reality (whether a tracker or rate allowance based on forecasted expense levels). Dogmatic adherence to the historical test year will be nothing short of confiscatory given the large increases KCP&L will experience in transmission expense when rates set in this case are in effect.

139. The evidence fully supports the Commission's adoption of a transmission tracker. It is a fair and reasonable response to mounting transmission expenses that will be deferred to the balance sheet and thoroughly reviewed for recovery in a future general rate case.

1. Should KCP&L Get a Return On, as well as Return Of the Tracked Amounts?

140. Staff opposes the Company receiving a return on as well as a return of tracked amounts, arguing that they are not "a capital addition." See Staff Initial Brief at 65. However, the Commission has authorized such rate base treatment in the past for such deferred expenses. The Court of Appeals explicitly approved such treatment for operating expenses like property taxes, carrying costs, and depreciation. State ex rel. Aquila, Inc. v. PSC, 326 S.W.3d 20, 30-31 (Mo.App. W.D. 2010). Allowing a return on, as well as a return of this investment is consistent with the purpose of the Public Service Commission Act, which is "to insure to the investors a reasonable return on funds invested," particularly when the recoupment of that investment is delayed. Id. at 31. See State ex rel. Washington Univ. v. PSC, 272 S.W. 971, 9073 (Mo. en banc 1925).

2. Should KCP&L Get Carrying Costs on the Tracked Amounts?

141. Similarly, it is appropriate for KCP&L to receive a return of carrying costs that reflect the costs that will be incurred by the Company. Granting KCP&L such treatment would simply recognize the time value of money, which the courts have held to be a basic economic concept in allowing recovery to an investor. State ex rel. Aquila, Inc. v. PSC, 326 S.W.3d 20, 31 (Mo. App. W.D. 2010). See Akers v. City of Oak Grove, 246 S.W.2d 916 921 (Mo. en banc 2008).

VI. PROPERTY TAX EXPENSE

A. Property Taxes Are Not Fully Assessed Until Several Years After Plant Is Placed In Service—This Lag Is Not Recognized By Staff's Traditional Method of Calculating Property Tax Expense

142. Staff, OPC and MECG maintain that KCP&L's property tax expense is predictable and a normal utility expense for which a tracker is not necessary. If property tax expense is as predictable as alleged by Staff, OPC and MECG, then the Commission should base the rate allowance for property taxes on the property tax forecast[31] provided in by KCP&L witness Melissa Hardesty by adding $5.6 million to the Staff's proposed rate allowance that is based on December 31, 2014 information. See Ex. 113, Hardesty Surrebuttal at 5-6; Ex. 136, Rush Surrebuttal at 16-17. While it is true that all businesses with assets pay property taxes, KCP&L's property tax assessment process is far from ordinary as it has resulted in steadily rising property taxes in recent years, consistently outpacing the rate allowance for property tax expenses. These are due to the fact that property tax appraisers do not rely just on the cost of the property but also on the Company's average level of net operating income over a period of time (Income Approach). See Ex. 113, Hardesty Surrebuttal at 2. As explained by Company witness Melissa Hardesty in response to Commissioner Kenney's questions, KCP&L's level of property tax assessment is uncertain and delayed because the more plant that is put in service, the more that its electric rates increase which increases the Company's net operating income which ultimately increases the Company's value which leads to a higher property tax assessment. See Tr. 1812.

[31] Staff erroneously argues that KCP&L's forecast alternative should be rejected as improper surrebuttal testimony. See Staff Initial Brief at 92. This Staff argument is erroneous because KCP&L made this alternative proposal in direct response to Staff's rebuttal testimony in which Staff opposed tracker treatment for property tax expense and, as such, it is proper surrebuttal testimony. See Ex. 136, Rush Surrebuttal at 16-17; 4 CSR 240-2.130(7)(D).

143. There is a significant lag from the time the Company places plant in service and the time it takes for that property to be fully reflected in property tax assessments. See Tr. 1812. For Iatan 2, which was placed in service in 2010, the Company experienced increased property tax assessments five years later because it takes three to five years for new plant to be fully reflected in property tax assessments. See Tr. 1812. This lag in the assessment of property taxes is also the case for the Company's investment in the La Cygne Environmental Project and in the Wolf Creek plant as well as other expenses. See Ex. 113, Hardesty Surrebuttal at 5. It will likely be 2017 or later before the full impact of the net operating income generated by the new rates authorized due to the investment in these projects will be seen in state property tax assessments. It is this increase in net operating income in future years that will be the primary factor for continued increase in property taxes in future years. Id.

144. Staff and OPC don't address this lag. Indeed, they admit that they are not familiar with the appraisers' use of the Income Approach. See Tr. 1823-1825; 1838. This "unfamiliarity" is how Staff maintains on page 93 of its Initial Brief that the Company's annualized level of property tax expenses can be easily calculated. Staff and OPC simply ignore the uncertainty created by the appraiser's Income Approach and base their property tax allowance adjustment only on the Cost Approach (value of the cost of plant placed in service). However, the historical cost method has not been used for the past decade by the appraisers. See Tr. 1810. The Staff and OPC attribute the rising level of property tax increases to the Company's recent construction program, and assert that since the program is over, that property taxes will not be increasing in the future. See Staff Initial Brief at 93; OPC Initial Brief at 49. This is plainly wrong as KCP&L has shown that rate base will continue to rise after this case because capital expenditures for 2015-2019 will exceed the rate allowance for depreciation

expense. See Ex. 121, Ives Surrebuttal at 23. Additionally, the Company has shown that property taxes have increased by more than the value of the plant in service in 2013 and 2014. See Ex. 113, Hardesty Surrebuttal at 3. Staff does not consider that an increase in net operating income (likely to occur as a result of this rate case) or other factors such as mill levies will impact KCP&L's property taxes. See Ex. 113, Hardesty Surrebuttal at 4. Staff's and OPC's refusal to examine how property taxes are actually assessed permits them to assert that there is no need to deviate from the Staff's traditional approach to property taxes.

145. Related to their refusal to recognize the increasing and lagging nature of property tax expense, Staff and MECG claim that the property tax expenses are not volatile or substantial enough to affect KCP&L's financial performance. Company witness Darrin Ives demonstrated how the rate allowance for fuel and purchased power costs, transmission fees, CIP/cyber-security costs and property taxes was inadequate after the first year of new rates from KCP&L's last rate case and produced an after tax earnings shortfall of approximately $19.8 million in 2013. See Ex. 120, Ives Rebuttal at 10. The amount of under-recovery for property taxes contributed almost $4 million to this earnings shortfall amount. KCP&L's property tax under-recovery grew in Year 2 (2014 – $23.9 million, of which property taxes accounted for $6.8 million) and Year 3 ($24.2 million, of which property taxes accounted for $8 million). Thus, the amount of property tax expense under-recovery is not only a substantial portion of the Company's under-earnings, but it has nearly doubled in two years.

B. The Traditional Method of Calculating Property Tax Expense Will Not Allow the Company to Recover in Rates its Actual Property Taxes

146. Because Staff did not investigate anything that conflicts with its traditional approach to calculating property tax expense - as opposed to the way property taxes are actually assessed – Staff's solution to increasing property taxes is for the Company to file more rate

cases. Yet Staff and others complain bitterly about the frequency of the rate cases. Staff's "solution" does not eliminate the earnings shortfall resulting from the mismatch between actual property taxes and the rate allowance for those costs in rates. While rates can be adjusted going forward to adjust for increased property taxes, those increased costs levels will only be recovered on a going forward basis and the past earnings shortfall will never be recovered by the Company. See Ex. 135, Rush Rebuttal at 38.

147. Because the Company has proved that it is experiencing an earnings shortfall due to the increase in net operating income in future years which is not recognized in the calculation of property taxes under the traditional Cost Approach. The Commission should adopt one of the Company's solutions to address this issue. It should either authorize a tracker for property tax expense or institute a rate allowance based on a forward-looking estimate of property tax costs. Either solution will permit rates to reasonably match costs and revenues.

148. Staff argues that if tracker treatment is authorized for KCP&L's property tax expenses, then rate base treatment should not be allowed and the Company should not be permitted to accrue carrying costs because it would result in KCP&L customers paying more for an expense that can be readily determined using normal ratemaking principles. See Staff Initial Brief at 95-96. But as shown above, the only reason Staff believes that property tax expense can be readily determined is that it does not take into account how appraisers use the Income Method to determine property taxes and the resulting lag experienced by the Company in the assessment of plant additions. The Commission should reject the Staff's circular argument and permit rate base treatment and carrying costs. The record shows that the property tax assessment for the La Cygne project and investments in the Wolf Creek Plant won't occur until 2017 or later. See Ex. 113, Hardesty Surrebuttal at 5; Tr. at1817-1818. Under Staff's method KCP&L will be

required to pay those costs and in doing so will be advancing funds needed to continue providing electric service. KCP&L's recovery of these funds advanced to pay property taxes cannot begin until new rates are set in a subsequent rate case and recovery will likely be spread out over several years. Due to this delay, and given the magnitude of the funds expected to be advanced, the Commission should allow the Company to recover carrying costs that it will incur with respect to these advanced funds. As Staff notes at page 95 of its Initial Brief, carrying costs are appropriate for demand side management costs that are advanced by the Company. Staff has offered no good reason why property tax expense should be treated differently than those costs. See also paragraphs 140-141, *supra* for additional authority for the Commission's authorization of a return on and return of tracked amounts.

VII. CIP/CYBER-SECURITY EXPENSE

149. Staff, OPC and MECG addressed this issue in their initial briefs and KCP&L will respond to those initial briefs only as needed to address matters KCP&L had not already adequately covered. As such, KCP&L's decision not to address a particular argument does not constitute acquiescence.

A. Response to Staff

150. Staff argues that CIP/cyber-security O&M expenses as trued-up through May 31, 2015 should be reflected in revenue requirement as they "provide the most accurate calculations possible." See Staff Initial Brief at 98. While KCP&L agrees that the true-up figure is appropriate and accurate if used as the baseline revenue requirement for purposes of tracking CIP/cyber-security O&M expenses, the record evidence unequivocally establishes that KCP&L's CIP/cyber-security O&M expenses will continue to rise, and rise significantly, after May 31, 2015. See Ex. 132, Phelps-Roper Rebuttal at 3. Since rates are being set for a future period and since Staff opposes a tracker and proposes to use the May 31, 2015 level of CIP/cyber-security

O&M expenses as the fixed allowance for rate setting purposes, the relevant question, therefore, is whether the May 31, 2015 level is reasonably representative of costs to be experienced during the period when rates are in effect. It is not.

151. Staff also argues that the Company is free to defer CIP/cyber-security O&M expenses as it sees fit, citing the Commission's Report and Order in Case No. ER-2012-0174 as support for that proposition. See Staff Initial Brief at 98. This Staff argument is flawed, however, because the Commission acknowledged in a subsequent proceeding that explicit Commission authorization is required before deferrals can be recognized in published financial reports and that companies cannot obtain many of the benefits of deferral accounting absent such publication. See Report and Order, Case No. EU-2014-0077, page 8, para. 10, issued July 30, 2014. Staff also argues that a tracker is inappropriate because it "presumes that costs recorded in that tracker are recoverable" and "[S]uch a presumption runs contrary to the prohibition against single-issue ratemaking. See Staff Initial Brief at 98. This Staff argument is wrong on many levels. First, no party even hinted that CIP/cyber-security O&M expenses are not properly recoverable as a necessary element of providing electric service. Consequently, it is fair to say that all parties have presumed that such costs are recoverable. This does not mean, however, that all CIP/cyber-security O&M expenses deferred pursuant to a tracker will actually be recovered in rates because that can only occur upon Commission approval in a subsequent general rate proceeding where the deferred costs will be subject to review for reasonableness among all relevant factors. The case law is clear that an order permitting deferral (like a rate order authorizing tracker treatment) does not amount to a guarantee of recovery for the deferred costs. See State ex rel. Missouri Gas Energy v. PSC, 978 S.W.2d 434, 440 (Mo.App. W.D. 1998); State ex rel. Aquila, Inc. v. PSC, 326 S.W.3d 20, 27 (Mo.App. W.D. 2010). Likewise, because rate

recovery of the deferred costs occurs in a subsequent general rate proceeding where all relevant factors are considered, Staff's argument that a tracker violates the prohibition against single-issue ratemaking also fails.

152. Staff also lays out four criteria that it argues dictate denial of tracker treatment for KCP&L's CIP/cyber-security O&M expenses. Although KCP&L disagrees with Staff's proposed criteria, an objective application of those criteria would actually justify granting the tracker treatment KCP&L has requested. The first two Staff criteria are whether the costs are new with little historical experience and demonstrate significant fluctuation making accurate estimation difficult. This has been clearly demonstrated in the rebuttal testimony of KCP&L witness Phelps-Roper. See Ex. 132, Phelps-Roper Rebuttal at 3; 6-9. The third Staff criterion is whether the costs are imposed by Commission rule. While CIP/cyber-security O&M expenses are not imposed by Commission rule, it is beyond dispute that they are the result of mandates by other governmental agencies, and there is no basis whatsoever to limit tracker treatment to cost changes resulting exclusively from rules of this Commission. This criterion also bears on the lack of significant management control over these costs. See Staff Initial Brief at 100. While KCP&L, as the implementer of CIP/cyber-security requirements mandated by governmental entities, admittedly has some level of control, compliance with these requirements is mandatory as is the compliance timeline. See Ex. 132, Phelps-Roper Rebuttal at 9-10. Given the continually evolving nature of these requirements[32] even while implementation efforts are under way, the notion that KCP&L has any meaningful ability to control these costs is unsupportable. See Ex. 132, Phelps-Roper Rebuttal at 7-9; Tr. 1864:7-1865:4. Fourth, KCP&L has

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[32] Since the evidentiary hearing, FERC issued a Notice of Proposed Rulemaking to approve seven *new* CIP Reliability Standards, as well as to direct NERC to develop additional reliability standards related to the protection of communication networks and to supply chain management. See Revised Critical Infrastructure Protection Reliability Standards, 152 FERC ¶ 61,054, No. RM15-14-000 (July 16, 2015).

demonstrated that future CIP/cyber-security cost increases will materially reduce its achieved ROE relative to its Commission-authorized ROE if not afforded reasonable regulatory recognition. See Ex. 120, Ives Rebuttal at 10:5-6.

153. Staff goes on to argue that "[C]osts that simply increase are not considered 'volatile'" and "[E]stimation is clearly not difficult, as both KCPL and Staff provided projections of future costs in their testimony." Then, absent a tracker, bi-lateral fairness requires recognition in KCP&L's revenue requirement of $3.5 million in forecasted CIP/cyber-security O&M expenses above and beyond the May 31, 2015 level as KCP&L has proposed as an alternative to tracker treatment. See Ex. 135, Rush Surrebuttal at 15-16. Additionally, Staff's argument that KCP&L's forecast treatment alternative was inappropriately made in surrebuttal testimony is wrong as the forecast treatment was clearly advanced as an alternative to tracker treatment after Staff recommended rejection of tracker treatment for CIP/cyber-security O&M expenses in its rebuttal testimony. As such, KCP&L's forecast alternative is directly responsive to Staff's rebuttal testimony and is proper surrebuttal under 4 CSR 240-2.130(7)(D).

154. Finally,[33] Staff argues that if tracker treatment is authorized for KCP&L's CIP/cyber-security O&M expenses, then rate base treatment should not be allowed and that KCP&L should not be permitted to accrue carrying costs because, in Staff's view, "[T]he purpose of a tracker is not for utility profit . . .." See Staff Initial Brief at 101. This Staff argument should be rejected for a number of reasons. First, by labeling the cost of capital as "profit," Staff presumes that capital is cost-free which is wrong. If CIP/cyber-security O&M expenses rise after rates are set in this case, then KCP&L will be required to pay those costs and in so doing will be advancing funds needed to provide electric service on behalf of customers.

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[33] The Commission should disregard Staff's arguments regarding KCC action because they are unsupported by record evidence. See Staff Initial Brief at 101-102.

Recovery of any such advanced funds cannot commence until new rates are set in a subsequent KCP&L rate case and recovery will likely be spread out over several years. Under such circumstances, and given the magnitude of the funds expected to be advanced, it is necessary to recognize the carrying costs KCP&L will incur with respect to these advanced funds. This is precisely the way the tracker for demand side management costs operates (See In re Kansas City Power & Light, Report and Order, Case No. ER-2010-0355, p. 93, issued April 12, 2011) and Staff has offered no good reason that deferred CIP/cyber-security O&M expenses should be treated any differently than deferred demand side management costs.

B. Response to OPC

155. OPC insinuates that KCP&L would have the Commission believe that rejecting KCP&L's request for a CIP/cyber-security O&M expense tracker will affect the Company's compliance efforts. See OPC Initial Brief at 50. KCP&L has made it very clear that this is not the case, both by pointing out that compliance within applicable timeframes is mandatory (Ex. 132, Phelps-Roper Rebuttal at 9-10), and through testimony on the witness stand. See Tr. 1854:25-1855:5. While KCP&L will spend the money necessary to comply with CIP/cyber-security requirements regardless of whether a tracker or rate allowance based on forecast expenses is granted, favorable action by this Commission would be consistent with its approval of other trackers and, more importantly, underscore its commitment to reliability and security in the face of rapidly evolving cyber-threats to critical infrastructure.

156. OPC also argues that KCP&L's request for CIP/cyber-security O&M expense tracker treatment should be denied because OPC has found no other instance where such a tracker has been granted. See OPC Initial Brief at 51. Given the fact that CIP/cyber-security mandates have only recently escalated, as evidenced by KCP&L's history of such costs (Ex. 132, Phelps-Roper Rebuttal at 3), it should not be a surprise that little precedent exists on the issue.

Moreover, the recent order of the West Virginia Commission was based on different facts, where it found "that in the absence of concrete plans to implement specific security measures, projected costs or new regulatory requirements, the proposal of the Companies to implement a Security Rider is premature." See Ex. 223, Lyons Surrebuttal at 37:7. In stark contrast, KCP&L has provided substantial and detailed evidence of projected costs, project management and governance controls and references to the source of these CIP/cyber-security mandates.

C. Response to MECG

157. MECG would have the Commission deny KCP&L tracking treatment of CIP/cyber-security O&M expenses in reliance on the recent order of the West Virginia Commission. See MECG Initial Brief at 84-85. This argument is just as misplaced as OPC's and should be rejected.

158. MECG also argues that KCP&L's forecasted CIP/cyber-security O&M expense and capital levels are relatively stable. See MECG Initial Brief at 85-86. However, such capital expenditures are irrelevant because KCP&L has not requested their inclusion in the tracker. See Ex. 133, Phelps-Roper Surrebuttal at 3:1-4. Moreover, the O&M expense information MECG shows on page 86 of its initial brief is misleading because it omits 2014 O&M expense levels. Because the Company's opponents argue that rates in this case should only recognize CIP/cyber-security O&M expense levels as of May 31, 2015, examination of 2014 levels is necessary to understand how dramatically KCP&L's CIP/cyber-security O&M expenses will rise after the May 31, 2015 true-up in this case. See Ex. 133, Phelps-Roper Surrebuttal at 3. Clearly, 2014 is not representative of expectations for 2015, 2016 and 2017.

159. MECG also argues that including internal labor in the CIP/cyber-security O&M expense tracker will be "impossible" to administer. See MECG Initial Brief at 87. But this argument ignores the fact that KCP&L will be required to prove the reasonableness, necessity

and accounting of any deferred costs to the Commission in a subsequent general rate proceeding before rate recovery can begin. This mandatory review provides ample protection to customers.

VIII. LA CYGNE ENVIRONMENTAL RETROFIT PROJECT: WHAT LEVEL OF KCP&L'S INVESTMENT IN THE LA CYGNE ENVIRONMENTAL RETROFIT PROJECT SHOULD BE INCLUDED IN KCP&L'S MISSOURI RATE BASE?

160. Sierra Club remains the only party to this case that criticizes KCP&L's decision to retrofit La Cygne Units 1 and 2. Its major criticism continues to be the claim that the Company failed to consider the EIA's 2011 Annual Energy Outlook ("AEO") which it contends showed a drop in natural gas prices that made it more cost-effective to retire the La Cygne Units, rather than retrofit them. See Sierra Club Initial Brief at 8.

161. The clearest flaw in this theory is the simple fact that relying upon one study by a government agency that produces a forecast that ignores potential future regulations, such as the Clean Power Plan and other developments, would not be reasonable. By contrast, KCP&L relied upon five leading national sources to assess price forecasts, including studies that considered changes in law and regulation, as well as the AEO forecast. See Ex. 103, Blunk Direct at 36.

162. Another flaw is that Sierra Club ignores what it would have cost to install new generation capacity if the La Cygne Units were retired. See Ex. 110, Crawford Rebuttal at 10. Table 2 of Sierra Club witness Rachel Wilson's direct testimony purports to show the costs that KCP&L could have avoided if it had halted the La Cygne retrofit construction at various points. However, it ignores the costs that would be incurred in the construction of new generation capacity, as well as contract cancellation costs; it also fails to recognize that KCP&L only owns 50% of the La Cygne station. See Ex. 402, Wilson Direct at 28-29; Ex. 110, Crawford Rebuttal at 11.

163. Responding to Sierra Club's criticism regarding its assessment of gas costs, KCP&L noted that when it completed its October 2010 fuel price forecast that was used in the

predetermination case filed at the Kansas Corporation Commission ("KCC") in February 2011, it did take into account changes in the price of natural gas by relying on a composite of several forecasts. These forecasts came from Energy Ventures Analysis and three other firms, each of which were more current than the 2010 AEO forecast that was issued in April 2010. See Ex. 104, Blunk Rebuttal at 3-4; Tr. 772 (Blunk). As Mr. Blunk explained, utilizing a composite of forecasts mitigates Sierra Club's concerns because fresh data was used. See Ex. 104, Blunk Rebuttal at 4.

164. More importantly, KCP&L continued to assess its decision to retrofit La Cygne during 2011, and continued its reassessments from 2012 through 2015 as part of the Integrated Resource Planning ("IRP") Process. See Ex. 110, Crawford Rebuttal at 7. Sierra Club simply dismisses these studies because it disagrees with them.

165. Sierra Club also relies upon Ms. Wilson's "new analysis" to support its view that the La Cygne Units should have been retired. See Sierra Club Brief at 5, n. 14; 8-9. However, as indicated during the evidentiary hearing, Ms. Wilson's new or "re-analysis" of KCP&L's 2011 results showed that a retrofit of La Cygne compared with a retirement of La Cygne (with the Montrose Units retired under both scenarios) favored a retirement decision by only $4 million, compared with a total project cost exceeding $1 billion. See Ex. 402, Wilson Direct at 27.

166. The $4 million difference that Sierra Club found to favor retirement was, as Ms. Wilson admitted at the hearing, "marginal." See Tr. 821. Such an analysis is hardly probative of imprudence on the Company's part since Ms. Wilson's colleague Dr. Hausman in the Kansas predetermination case testified that differences in tens to hundreds of millions of dollars were "extremely small differences." Id. See Ex. 402, Wilson Direct, Sch. RSW-3, Hausman KCC

Direct Testimony (Net Present Value of Revenue Requirement differences of $205 million to $400 million "among the plans are extremely small"). Given the weakness of this position, Sierra Club can only suggest that if its analysis had been used, it "*likely* would have led KCP&L to the conclusion" to retire the La Cygne units. See Sierra Club Initial Brief at 6. As discussed in KCP&L's Initial Post-Hearing Brief, these facts are insufficient to raise the "serious doubt" required by Missouri law to remove the presumption of prudence in KCP&L's actions. See KCP&L Initial Brief at ¶¶ 233-37.

167. However, the more important point is that while Sierra Club asks for a disallowance of $68 million, based on the AEO Early Release January 2012 data (See Sierra Club Initial Brief at 13; Ex. 402, Wilson Direct at 23-24), the "re-analysis" using October 2012 data saw that figure shrink to $4 million. Id. at 27. If KCP&L's forecast using multiple sources had been used instead of the single biased gas forecast that did not take future environmental regulations into consideration, it is likely that Sierra Club's analysis would have shown that retrofitting La Cygne was the most cost-effective choice, as KCP&L concluded in its 2012 IRP and subsequent assessments conducted through 2015. See Ex. 110, Crawford Rebuttal at 7, 10-11.

168. Finally, it is ironic that in its prefiled testimony Sierra Club made no specific recommendation of disallowance, simply offering that "some or all" of the La Cygne retrofit costs should be disallowed. The failure to conduct such an analysis is perhaps unsurprising given Sierra Club's failure to take into consideration practical consequences of decisions regarding retirement, retrofitting or cancellation of projects. As noted by Mr. Crawford, the consequences of such decisions in this case would have exceeded $1 billion. See Ex. 110, Crawford Rebuttal at 10-11. Sierra Club's eleventh hour recommendation of a $68 million

disallowance reflects the lack of rigor that characterizes its analysis. Given the fact that neither Staff, OPC nor the well-funded industrial intervenors recommended even one dollar of disallowance regarding the La Cygne retrofit project, the arguments of Sierra Club should be disregarded.

IX. RATE CASE EXPENSE

A. OPC and MECG Attorney Fee Disallowances Are Not Supported by the Record

169. MECG and OPC[34] both allege that the rates paid to the Company's outside counsel are imprudent because they are above the rate that Ameren paid to one of its outside counsel at Smith, Lewis in its last rate case. It should be noted that Ameren, like KCP&L employed two outside law firms in its last rate case (Smith, Lewis and Brydon, Swearengen & England). No mention of the Brydon, Swearengen rates was made by OPC or MECG. These rate criticisms do not raise a serious doubt as to the fees paid to KCP&L outside counsel because the evidence does not show that KCP&L could have hired the same counsel at the same level of expertise and experience for the same rate that Ameren paid. Mr. Lowery's lower rates are available to Ameren due to the amount of legal work that he does for Ameren. See Tr. 968; Ex. 164, Ives True-Up Rebuttal at 12. Mr. Lowery also indicated that he recently raised his rate. See Tr. 967.

170. While the rates that Ameren pays for outside counsel do not establish that KCP&L has incurred excessive or imprudent levels of rate case expense, a relevant Ameren comparison is the total amount of rate case expense. It appears that Ameren uses its outside counsel very differently than KCP&L does as Ameren's total rate case expense in its last rate

[34] On page 52 of its Initial Brief, OPC incorrectly lists the rates of KCP&L's outside counsel as $495 and $350 per hour. The correct rates are found on page 27 of OPC witness Addo's surrebuttal testimony.

case was approximately $2.4 million while KCP&L expects to incur less than $1.4 million in this case. See Ex. 164, Ives True-Up Rebuttal at 12. There is simply no basis for the Commission to conclude that KCP&L has incurred an unreasonable level of attorney fees in this case. Id.

171. OPC also claims that two pages of a 2012 Missouri bar survey shows that $200/hour is a reasonable rate to be paid to KCP&L's outside counsel. These pages do not provide any guidance for the rates for attorneys that specialize in PSC rate cases, nor do they indicate the experience level of the attorneys that responded to the survey. Perhaps this is why the survey contains a disclaimer that it should not be used as an absolute standard and should be considered and used in its entirety. See Ex. 164, Ives True-Up Rebuttal at 11.

172. The record does contain regulatory attorney hourly rate information from 2009-2010 that was used by the KCC in its order regarding KCP&L's recovery of rate case expenses in Kansas. The KCC considered the distribution of attorney rates in the 2010 KCP&L rate case and found that approximately one-third of counsel charged over $350/hour at that time. See Ex. 225, Majors Rebuttal at Schedule KM-s7 at 44. The KCC found that the most experienced attorneys that appear regularly before it charged rates in the range of $250 to $400 per hour. Id. While the Company does not believe that the KCC's decision was correct in all respects and notes that the rate information is at least five years old, the KCC's analysis does show that rates for attorneys that specialize in rate cases are nowhere near $200/hour. Consequently, OPC and MECG have not raised serious doubt as to the prudence of KCP&L's expenditures for outside counsel.

173. The Commission should also examine the Highly Confidential information on p. 7 of Staff's August 2013 Report in AW-2011-0330 (Ex. 243) for Staff's 2011 analysis of hourly rates charged by outside attorneys in rate cases. While the maximum rate was over

[redacted], most attorney charges were in the range of **[redacted]** for rate case work. The rates of KCP&L's outside counsel are well within this range, especially considering that Staff's range of rates is from 2011. The rates paid to KCP&L's outside counsel were not imprudent or excessive.

174. As a supplement to their argument, both OPC and MECG complain that KCP&L should not have used outside counsel because they speculate that KCP&L's in-house attorneys could have undertaken a larger portion of the presentation of the issues in the hearing room. MECG takes the additional step of asking the Commission to remove the entire cost of one of KCP&L's outside attorneys. This superficial analysis ignores the reality of a rate case. Unlike OPC and MECG, the Company must be prepared to try every issue before the Commission and be prepared for opposition from numerous parties. The List of Issues, Order of Witnesses, Order of Cross-Examination and Order of Opening Statements filed with the Commission listed 28 separate issues and many of those issues had multiple sub issues. While some of those issues eventually settled during the hearing, KCP&L had no way of knowing which issues would settle, since the settlement agreements were not filed until well after the hearing began. Not only did KCP&L's attorneys have to prepare its witnesses for hearing and cross-examination for these issues—they also had to negotiate and draft the settlement agreements during the hearing. KCP&L needed both in-house and outside counsel to make sure that the Company was prepared to litigate as well as prepared to settle the issues and document the settlements with stipulation(s). Not to mention the fact that KCP&L attorneys also have responsibility for the numerous PSC and KCC dockets (including a simultaneous Kansas rate case) outside the Missouri rate case.

HIGHLY CONFIDENTIAL

175. OPC and MECG have the luxury of not taking a position on every issue or even collaborating with each other and other parties to cover certain issues. In its position statement filed in this case, MECG stated 21 separate times that it was taking no position on a particular issue or sub-issue while OPC stated 12 times that it did not file testimony on a particular issue or sub-issue and would base a final position on the testimony provided at hearing. Both OPC and MECG also relied on the positons of Staff on many issues and neither OPC nor MECG briefed all 28 issues. OPC had to prepare a total of four witnesses for hearing (Marke, Dismukes, Addo and Robertson) while it shared Kollen and Dauphinais with MECG. MECG had two witnesses to prepare (Brosch, and Brubaker (shared with MIEC)). By contrast, the Company had to prepare 16 witnesses for hearing. The Company's positon is much like that of Staff in that it must be ready to litigate all rate case issues, it can't pick certain issues to litigate and let other parties carry the ball on the rest. Staff used nine attorneys in this case. Ameren used at least five in its last rate case. These numbers show that KCP&L's use of outside counsel is not excessive or imprudent and is within the mainstream of other utilities and other parties such as Staff that must be prepared to litigate all issues before the Commission.

176. OPC in its true-up rebuttal testimony also recommended disallowance of a portion of the attorney fees for the law firm (Cafer Pemberton) used by the Company to prepare witnesses for the La Cygne decisional prudence issues. See Ex. 318, Addo True-Up Direct at 10. This proposed disallowance should be rejected for the reasons set forth above. There has not been a serious doubt raised as to the rates paid to outside counsel and there is no credible evidence to support a reduction of attorney fee rates to $200/hour. In addition, OPC indicated that it was investigating the prudence of the use of Cafer Pemberton for witness preparation. Id. at 11. The use of Cafer Pemberton was a cost effective way to prepare for the hearing of the

La Cygne issue. See Ex. 164, Ives True-Up Rebuttal at 12-13. The Company believed that the issue of decisional prudence regarding the La Cygne environmental investment would be raised by the Sierra Club in this case based on the positions that the Sierra Club took in the Company's last rate case. Id. Cafer Pemberton assisted in preparing Company witnesses Bell, Crawford and Ling for the Missouri hearing as they already had experience with the La Cygne issues in the Kansas predetermination case, where they presented these same witnesses to the KCC. Id. It was more cost effective to use Cafer Pemberton for this work as no other counsel working on the Missouri rate case had been involved in the Kansas predetermination case and would have had to spend many hours getting up to speed on this issue. Id. Sierra Club did indeed challenge the decisional prudence of the La Cygne project using many of the same arguments that were raised at the Kansas predetermination hearing. Id. The Company's decision to use Cafer Pemberton for witness preparation and to prepare its witnesses for Sierra Club's arguments well ahead of the Missouri hearing was prudent. Id.

B. KCP&L's Use of Consultants Was Prudent

1. Dr. Overcast's Testimony Provided a National Perspective

177. Staff joins OPC and MECG's argument that the expenses of Company witness Overcast are imprudent and should be disallowed. Staff witness Majors, however, admitted that Dr. Overcast's costs were not imprudent. See Tr. 1041.

178. Staff and OPC claimed in their prefiled testimony that Dr. Overcast's work was duplicative. However, both Staff and OPC witnesses admitted that Dr. Overcast addressed issues that no other company witness addressed. See Tr. 1038, 1075. The record is clear that the Company retained Dr. Overcast to provide the Commission with national expertise regarding regulatory mechanisms, especially how other states approach the problem of regulatory lag. See Tr. 971

179. Perhaps because Staff and OPC witnesses agreed that Dr. Overcast's testimony was not duplicative, Staff, OPC and MECG expand their argument and argue in their initial briefs that Dr. Overcast's testimony is inapplicable to Missouri and unnecessary and excessive. See Staff Initial Brief at 103; OPC Initial Brief at 53; MECG Initial Brief at 92. Staff claims, without any support, that Dr. Overcast's national perspective added nothing useful to the testimony before the Commission. See Staff Initial Brief at 105. Evidence as to how other states address the same issues facing the Commission provides value. The Commission has requested the perspective of other state regulatory approaches when looking at other issues such as rate cast expense. See paragraphs 43-44, *supra*, for further reasons why Dr. Overcast's testimony was applicable to Missouri ratemaking. That Staff, OPC and MECG disagree with Dr. Overcast's opinions is not a reasonable or sufficient basis to find that KCP&L's retention of his services for this case was imprudent.

2. Management Application Consulting ("MAC") Was Needed to Perform a Cost of Service/Rate Design Study

180. MECG proposes to disallow the costs the Company incurred for the preparation of KCP&L's costs of service study and rate design proposals because it believes that KCP&L witness Tim Rush is capable of performing such services. This bare allegation was made for the first time in MECG's initial brief and not in testimony This allegation does not raise a serious doubt as to the prudence of using MAC for this work as the evidence shows that Company witness Tim Rush did oversee the study. See Tr. at 972-973. Company witness Tim Rush also filed testimony on a multitude of issues (retail revenues, ERPP, FAC, Trackers, Solar Rebates, Weatherization Program, LED Street and Area Lighting) as well as testimony on class cost of service and rate design. Given Mr. Rush's level of involvement in other areas, the Company's decision to use a consultant to assist in the preparation of the cost of service study and rate

design proposal was a prudent one especially since the use of MAC would provide a level of certainty that the study would be consistent with prior studies conducted by MAC in KCP&L's previous cases. Id. Further, the class cost of service model utilized is complex, particularly compared to other models offered in the case. MAC's expertise was needed to manage the model.

3. KCP&L, Like Most Other Utilities, Used a Nationally Recognized Expert for Rate of Return/ROE issues

181. Again for the first time in its Initial Brief, MECG asks the Commission to remove all of the costs of the Company's ROE witness Hevert because the Commission has rejected the analysis that Mr. Hevert presented in this case in past cases where he testified. Almost all Missouri utilities hire an outside consultant to sponsor rate of return/ROE in rate cases. See Ex. 243, Staff Report (Rate Case Expense Matters) in Case No. AW-2011-0330 at p. 1. Thus, KCP&L's use of Mr. Hevert is in the mainstream and the Commission should not disallow Mr. Hevert's costs simply because MECG doesn't agree with his testimony. MECG's argument is also faulty because it presupposes that the Commission rules the same way in every rate case and the Company should know in advance how the Commission is going to decide this case. Moreover, the Commission has accepted Mr. Hevert's recommendations in other cases such as the recent Liberty Utilities rate case (Case No. GR-2014-0152). MECG also claims that Mr. Hevert's fees are excessive by comparing them to MECG witness Gorman's fees. This analysis should also be rejected as the comparison is not apt. Unlike Mr. Gorman, Mr. Hevert's analysis is scrutinized by all parties to the rate case contesting ROE and thus, he must spend much more time responding to the data requests, criticisms in testimony, and preparing responsive testimony than Mr. Gorman. It is this additional work and responsibility that differentiates the tasks that Mr. Hevert must undertake from those of Mr. Gorman. The Commission should reject MECG's

last minute proposals to disallow the amount that KCP&L recovers for the services of Mr. Hevert.

C. Staff and OPC's 50% Disallowance of Prudently Incurred Rate Case Expense Should be Rejected by the Commission as the Company's Rate Case Expense is Not Excessive and is Being Controlled

182. Staff and OPC both propose a 50% disallowance of the Company's prudently incurred rate case expenses. While OPC has proposed this disallowance for many years, Staff acknowledges at page 106 of its initial brief that it is changing its policy on rate case expense. Both OPC and Staff share the same unsubstantiated rationales for the disallowance of rate case expense.

1. The Company is Successfully Controlling Rate Case Expense

183. First, both Staff and OPC assert that the current practice of allowing a utility to recover 100% of its rate case expense creates a disincentive for utility management to control its rate case expense. See Staff Initial Brief at 106, 110; OPC Initial Brief at 57. Both spend many paragraphs alleging that this lack of incentive led the Company to incur higher rate case expense than other utilities in past rate cases. But, like other Staff, OPC and MECG incentive-based arguments, these arguments rest on theory rather than the reality of what has actually happened. An examination of past rate case expenses reported in Case No. AW-2011-0033 (See Ex. 243) shows that OPC and Staff's assertions that KCP&L lacks incentive to control rate case expense are unfounded.

184. In its first rate case under the CEP (Case No. ER-2006-0314), the Company incurred rate case expense of approximately $1.4 million. See Ex. 243, Staff Report (Rate Case Expense Matters) in Case No. AW-2011-0330 at Attachment 1, p. 4. The next rate case (Case No. ER-2007-0291) was settled and the Company incurred approximately $700,000 in rate case expense. Id. In the next two rate cases (Case No. ER-2009-0089 and ER-2010-0355) the

amount of rate case expense increased to approximately $2.1 million and $4.4 million. Id. However, this higher level can be explained due to the unprecedented, and ultimately unsuccessful, prudence challenges mounted by Staff and other parties to the Iatan plant additions.[35] The complexity of these two cases contributed to the unusually large amount of rate case expense. The Commission reviewed the reasonableness and prudence of these expenses and made disallowances where it believed the expenses were excessive or imprudent. See Ex. 120, Ives Rebuttal at 29. For the current case, KCP&L estimates that its expenses will be less than $1.4 million. See Ex. 164, Ives True-Up Surrebuttal at 12.

185. The numbers show that KCP&L's current rate case expense levels are at the same level as its rate case expense in 2006. Despite the unsupported allegations by OPC of a "cost is no object" mentality at KCP&L (See OPC Initial Brief at 54), the cost control mechanisms and rate case expense philosophy described by Company witness Ives are holding the amount of rate case expense at the level that the Company experienced almost ten years ago. The Company utilizes a process to manage, monitor and control rate case expense. The Company knows that its rate case expense will be carefully reviewed by the Staff and other parties and already has an incentive to be efficient in its presentation of a rate case. See Ex. 120, Ives Rebuttal at 28-29.

2. Rate Case Expense is No Different Than Other Expenses Used to Provide Benefit to Customers and Shareholders

186. Next, Staff and OPC argue that a 50% disallowance is needed because the both the ratepayers and the Company's shareholders benefit from the incurrence of rate case expense. See Staff Initial Brief at 106, OPC Initial Brief at 55. While the Company agrees that both

[35] The Company needed additional construction consultants and attorneys in these cases due to Staff's recommendation to disallow all costs over the Iatan project's control budget estimate and the Missouri Retailers Ass'n's requested disallowance of over $220 million. See Report and Order, April 12, 2011, Case No. ER-2010-0355 at 39 and 63.

shareholders and ratepayers can benefit, the only manner which both parties can benefit is through the rate case process which is mandated by law. Rate case expense is no different from other costs that provide benefits to customers (generation, transmission and delivery expenses) because both customers and shareholders benefit from the Company's continued operation. See Ex. 120,_Ives Rebuttal at 21. Periodic rate increases are necessary, and provide a benefit to customers by keeping the utility financially healthy and in a position to provide the customers with safe and adequate service at just and reasonable rates. Id. The customer is the primary beneficiary when a utility is able to fulfill its statutory obligation to provide safe, adequate and reliable service.

187. It does not make sense to automatically disallow 50% of prudently incurred costs which benefit both the shareholder and the customer. Shareholders benefit from the construction of a new power plant because the construction generally increases shareholder earnings, while customers benefit from the additional capacity to serve them. Id. Under Staff and OPC's position, half of the cost of the power plant would be disallowed since both shareholders and customers benefit. The same is true for rate case expense. The sharing of benefits does not mean that costs are shared.

188. Staff and OPC both make the claim that rate case expense is similar to other costs such as charitable donations, incentive compensation and lobbying expenses where the costs are assigned 100% to shareholders because these costs do not directly benefit customers. See Staff Initial Brief at 108; OPC Initial Brief at 58. This comparison is faulty because lobbying, donations and incentive compensation costs are not imposed by the regulatory process required by law, whereas the Company can only seek to increase its rates by filing a rate case and incurring rate case expense. The Staff even recognizes this distinction when it advocates for

100% recovery of the depreciation study performed for this rate case because such a study is required by Commission rules. See Staff Initial Brief at 104; Tr. at 1029. Just like a depreciation study is required by law, in order to increase rates, the Company's filing of a rate case is mandated by law and it must be able to recover 100% of the prudently incurred rate case expenses associated with that filing.

3. Staff and OPC's Position is in the Minority as the Vast Majority of Other Jurisdictions Do Not Disallow 50% of Rate Case Expenses

189. OPC cites decisions from four other jurisdictions which have permitted rate case expense sharing in older, isolated cases, the most recent of which occurred in 2010. But contrary to OPC's claim at page 58 of its Initial Brief that the 50% disallowance of rate case expense in not unusual, the practice is not widespread among other state commissions. Staff's survey contained in Case No. AW-2011-0330 (Ex. 243) found that of the 22 commissions that participated in the survey, four indicated that rate case expense was a non-issue due to the use of incentive or formula rate regulation and the remaining 18 commissions required no arbitrary disallowance or cap on the amount of prudently incurred rate case expense. See Ex. 243 at 8.

4. There is No Evidence That KCP&L's Rate Case Expense is Excessive When Compared to Other Utilities

190. The Commission should look at the big picture. How can the rate case expenses of KCP&L (estimated to be less than $1.4 million) be found to be excessive by the Commission when it just permitted Ameren to recover $2.4 million in rate case expense? See Ex. 164, Ives Surrebuttal at 12. Additionally, the rate case expense level that impacts customers is also significantly affected by the length of the normalization period utilized, with a longer normalization period producing lower customer impacts. Id. Ameren's rate case expense is being normalized over a two-year period while KCP&L's expense is being normalized over a period of three years. Id.

191. As shown above, the Company has kept its rate case expense at 2006 levels. By punishing KCP&L by disallowing 50% of its prudently incurred rate case expenses, the Commission sends a message to all Missouri utilities that the prudent management of rate case expense does not matter.

X. SHOULD THE COMMISSION ORDER A MANAGEMENT AUDIT OF KCP&L?

192. MECG and OPC have raised no legitimate arguments in their initial briefs that would support their recommendation for a time-consuming, resource-consuming, and expensive management audit of KCP&L. See MECG Initial Brief at 95-102; OPC Initial Brief at 61-63. No other party, including Staff, DOE, MIEC, Sierra Club, Consumers Council of Missouri, or Missouri Division of Energy ("DE"), has supported MECG/OPC's recommendation for a management audit, and neither should the Commission.

193. Contrary to MECG/OPC's unsubstantiated assertions of "excessive costs" at KCP&L, the competent and substantial evidence in the record demonstrates KCP&L has been successful in bringing substantial benefits to customers while keeping its A&G costs below the median of similarly situated companies. Most importantly, KCP&L is proactively managing its costs and personnel, and continually evaluating methods and procedures that would improve KCP&L's efficiency. See KCP&L Initial Brief at 114-16. KCP&L's Chief Operating Officer Scott Heidtbrink explained KCP&L's efforts to manage its costs as follows:

> We manage our costs to maintain competitive electric rates and we recognize that rate increase requests pose challenges for our customers. The Company has worked very hard to manage the costs that can be controlled, which ultimately reduce the rate increase request. KCP&L has undertaken a host of cost control measures over the past several years, including but not limited to, the supply chain transformation project, benchmarking initiatives in the generation, delivery and supply chain areas, and disciplined management of employee headcount. The Company's cost control efforts have allowed the Company (total Great Plains Energy) to reduce non-fuel operating and maintenance ("NFOM") costs by $3 million since 2011. Actual NFOM for the Company (not including Regulatory Amortizations, MEIAA Costs, Weatherization, RTO Fees, and non-controllable

> Wolf Creek expenses) in 2011 totaled approximately $614 million which decreased by $2.6 million to approximately $611.4 million in actual NFOM in 2013.
>
> See Ex. 114, Heidtbrink Direct at 16.

194. To support its recommendation for a management audit, first MECG points to the recent rate increases that the Commission has approved for KCP&L. See MECG Initial Brief at 95; OPC Initial Brief at 62-62. What MECG and OPC fail to acknowledge is that the customers have received substantial benefits from the rate increases approved by the Commission. KCP&L has made significant investments in its system in the past decade as a part of the CEP to increase generating capacity, improve reliability, replace aging infrastructure and meet the requirements of environmental regulations.

195. In the CEP Stipulation that was approved by the Commission in2005, KCP&L committed to undertake commercially reasonable efforts to make the following investments:

- To build 100MW of wind generation in 2006;
- To explore the potential for an additional 100MW of wind in 2008;
- Proceed with environmental investments related to Iatan 1 and La Cygne 1 for accelerated compliance with environmental regulations;
- To invest in transmission and distribution facilities and upgrades;
- To build 800-900MW of new coal-fired generation at the Iatan Station, including state-of-the-art environmental equipment; and
- Propose a portfolio of demand response, energy efficiency and affordability programs for approval by the Commission.

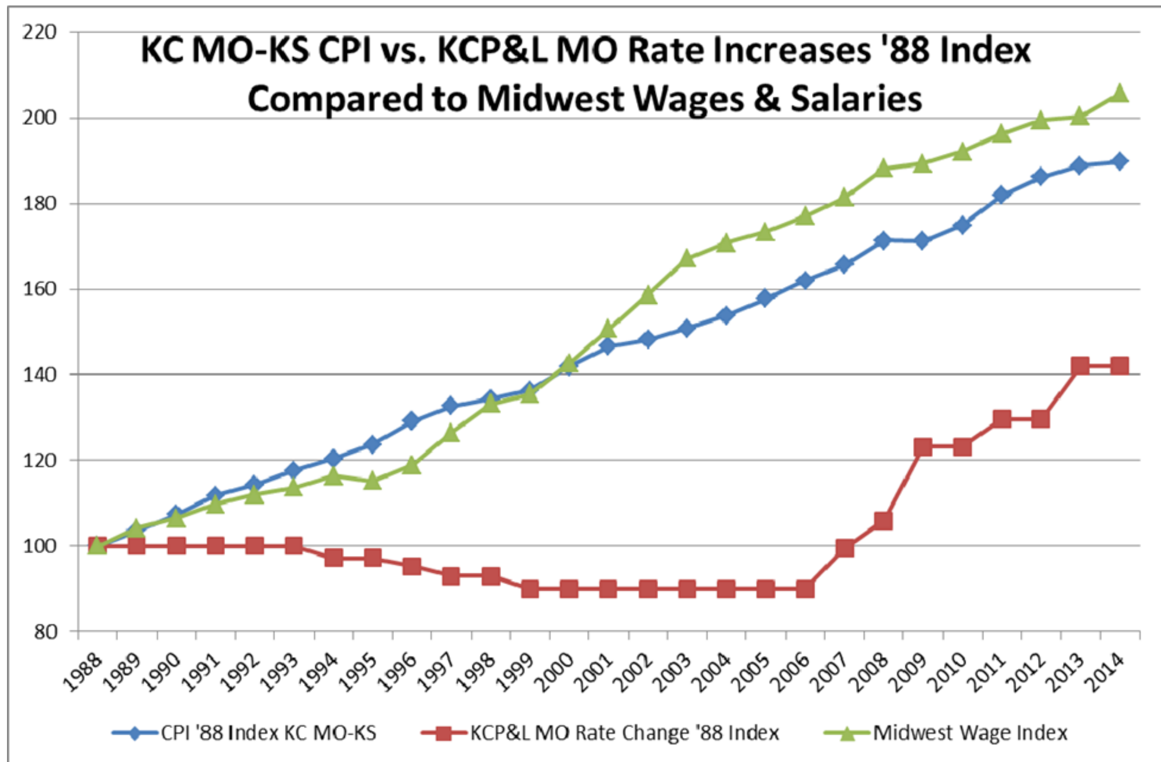
196. KCP&L has successfully completed these investments for the benefit of its customers. In addition, the Company has made significant achievements in the area of renewable energy and improvements in environmental controls:

- In 2011, KCP&L negotiated two wind-based Power Purchase Agreements ("PPA") for a total of 231.9MW, both of which became operational in 2012.
- On November 3, 2011, KCP&L signed a PPA for 56MW of hydro-based generation from existing facilities in Nebraska under the control of Central Nebraska Public Power Irrigation District. Energy delivery under this PPA commenced on January 1, 2014.
- In 2013, KCP&L negotiated a 200MW wind-based PPA which is to become operational in late 2015.
- Through September 30, 2014 KCP&L has issued nearly $30 million in solar rebates to eligible customers since the Solar Photovoltaic Rebate Program tariff was initiated in 2010. Additionally, KCP&L has installed a 100kW solar facility at the Paseo High School in Kansas City with an additional 80kW of solar installed in 2012.
- Upon completion, KCP&L expects that it will have invested approximately $1.155 billion (the original budget was $1.23 billion) in its environmental retrofit of the La Cygne Generating Station. See Ex. 120, Ives Rebuttal at 3-4.

197. MECG and OPC also fail to acknowledge that KCP&L-MO's rates, even with these substantial investments, are approximately 15% below the national average, and slightly above (2%) the regional average for investor-owned utilities. See Ex. 120, Ives Rebuttal at 6. From 1988 to the present, KCP&L's Missouri electric rates have increased by 42.06% while the

Consumer Price Index for the Kansas City, Missouri urban area has increased by 89.66%. Wages have increased 105% for the same period.

198. The following chart demonstrates graphically that KCP&L's rates are increasing over this period at less than the Consumer Price Index and less than Wages and Salaries:



See Ex. 120, Ives Rebuttal at 6-7.

199. KCP&L has fulfilled its commitments under the CEP and has been successfully managing its resources and bringing these benefits to its customers without the need for a management audit. KCP&L's substantial accomplishments under the CEP have occurred in an environment in which off-system sales revenues (which would have offset retail rate increases) have been volatile and trending downward as wholesale electricity prices have declined. See Ex. 134, Rush Direct at 10-11. The fact that the Commission has approved rate increases to recover the Company's substantial investments over the last decade is not a justification for an outside management audit of KCP&L.

200. Secondly, MECG points to a cost comparison of utilities' 2010-2013 A&G, based upon FERC Form 1 Annual Reports. See MECG Initial Brief at 95-96. KCP&L has already addressed this faulty cost comparison in its initial brief. See KCP&L Initial Brief at 110-16. Based upon this FERC Form 1 data which MECG witness Lane Kollen admitted was "indicative, not determinative" of expense levels (See Ex. 501, Kollen Rebuttal at 7), he concluded that KCP&L's A&G expenses were significantly more than other utilities operating in the region. See Ex. 500, Kollen Direct at 9. However, he also concluded that "In general, the overall O&M expense using the metrics shown in the preceding table for KCP&L and GMO together is comparable to the average of the other utilities operating in the state and region ...." See Ex. 500, Kollen Direct at 7. However, the Commission should reject his conclusions that KCP&L's A&G levels are excessive since it is simply wrong.

201. KCP&L witness Ryan Bresette refuted Mr. Kollen's allegations that KCP&L's A&G costs were excessive. See Ex. 105, Bresette Rebuttal at 3-11. He explained that the recording of expenses to A&G by utilities is very subjective and open to interpretation under the FERC USOA. As a result, not every cost is recorded to the same FERC account for every utility and the recording of A&G costs is not consistent among utilities. Mr. Kollen himself recognized that public utilities account for A&G expenses differently using the FERC accounts. See Tr. 1205-06. Such differences in the treatment of the expenses will skew the comparative analysis of public utilities when the analysis is based solely upon FERC Form 1 data.

202. Third, MECG points to data developed by Staff which includes data from other companies used by KCP&L to compare compensation costs. See MECG Initial Brief 96-97. However, Staff's comparison is also based upon FERC Form 1 data which has the same

problems as the data used by Mr. Kollen because such data does not present an "apples-to-apples" comparison of the companies' A&G costs.

203. The only cost comparison in the record that includes an "apples-to-apples" comparison was presented by KCP&L in the form of the PA Consulting benchmarking study. As shown in Schedule RAB-1 (NP) to Ex. 105, Bresette Rebuttal, KCP&L/GMO's A&G costs are not excessive and are, in fact, below the median of the other utilities that participated in the benchmarking study.

204. Finally, MECG erroneously asserts that "there is no downside to KCPL or its customers from the Company undergoing a management audit." See MECG Initial Brief at 98. The obvious downside of MECG's recommendation is the cost of the audit, the time and resources required by the Company's management, the Staff and other stakeholders to participate in a management audit, and the increased rates that will result from including those management audit costs in rates. While it is clear that the entities that make up the MECG association (including Wal-Mart) do not want to pay for the management audit that they are recommending See Tr. 1215-17, it is not clear that any other consumer group or customer class wishes to pay for it either or have their rates increased to reflect the management audit costs. Apparently, MECG/OPC could only suggest that KCP&L pay for the management audit which Kollen suggests could be approximately $700,000 (See Tr. 1214) with only the "expectation" that customers "should" benefit from possible savings in the future. Apparently this expectation of savings is not certain enough to justify MECG to put up the money necessary to implement its recommendations.

205. OPC also cited In re Management Audit of Aquila, Inc., Case No. EO-2006-0356, and In re The Raytown Water Co., Case No. WR-92-85, for the proposition that an order from

the Commission ordering a management audit is not unprecedented. See OPC Initial Brief at 62. While it is true that the Commission on rare occasions in the past has ordered a management audit of public utilities, it should be noted that the management audits in the Aquila and Raytown Water cases were conducted by the Staff, not an outside independent auditor as being suggested by OPC and MECG in this case. The Aquila audit occurred prior to Aquila's acquisition by GPE in 2008. This audit appears to have focused on narrow issues related to executive compensation and capacity planning. OPC's cited cases do not serve as precedent for the wide-ranging, time-consuming, and expensive outside management audit being recommended by MECG and OPC in this proceeding. Nor has MECG/OPC provided specific statutory authority for the Commission to order KCP&L to enter into a contract for an outside management audit or compel KCP&L to pay the costs of it.

206. Based upon the competent and substantial evidence in the record, it is clear that MECG/OPC have put forward no meaningful evidence to substantiate their allegations regarding excessive A&G costs or their recommendation for a management audit of KCP&L. Consequently, there is no basis for the Commission to order the management audit requested by MECG/OPC. See Ex. 120, Ives Rebuttal at 50. The Commission should not burden KCP&L or its customers with the expense of a management audit based upon the unsubstantiated arguments raised by MECG and OPC.

XI. CLEAN CHARGE NETWORK

A. Should all Issues Associated with KCP&L's Clean Charge Network be Considered in a Separate Case, and Not Considered in This Case?

207. KCP&L agrees with DE and Brightergy that the Commission should support the development of electric charging station technology at this time (See DE Initial Brief at 1; Brightergy Initial Brief at 1-4), and not merely kick all issues related to electric charging stations

and the Clean Charge Network ("CCN") down the road to a working docket. Working dockets have not always been an effective or expeditious forum for resolving technical or controversial rate case issues. While the Commission, the Company, and other stakeholders will certainly be studying the results of KCP&L's pilot program in the future, after it is implemented, it makes no sense to delay the process at this time.

208. The fundamental issues have been fully addressed in this proceeding. The Commission should not hesitate to endorse the development of a public utility-sponsored electric charging network by including the relatively small portion of CCN capital expenditure as of May 31, 2015 (relative to the total CCN costs that will ultimately be incurred) in KCP&L's rate base and cost of service in this case. In addition, the issue of whether electric charging stations should be classified as a public utility service, and regulated by the Commission, is a legal issue that should be resolved in this case. Other issues, such as the final tariff design that will be used after the conclusion of the pilot program may and should be left for a future proceeding. However, the Commission should not accept the recommendations of other parties that wish nothing to be decided in this case and effectively deny by process KCP&L any recovery of its CCN investments. The Commission should be more supportive of this new technology than is being recommended by these opposing parties, and instead proactively encourage its development as suggested by KCP&L, DE and Brightergy.

B. Is the CCN a Public Utility Service?

209. KCP&L and DE agree the CCN is a public utility service under Missouri law. See KCP&L Initial Brief at 117-22; DE Initial Brief at 1-6. Other parties, including Staff and OPC, seem to equivocate on this legal issue, preferring to argue that KCP&L should not be allowed recovery of its costs associated with CCN. See Staff Initial Brief at 117-124; OPC Initial Brief at 65-66. See also CCM Initial Brief at 4. For example, Staff states:

> While Staff is not arguing that as a matter of law publicly available electric vehicle charging stations located in Missouri do not require Commission-issued certificates of convenience and necessity, Staff is recommending the Commission find that KCPL has not shown that charging electric vehicles at its Clean Charge Network charging stations in Missouri is a public utility service and, therefore, KCPL is not entitled to recover any of its capital investment in those stations from its Missouri retail customers. See Staff Initial Brief at 119.

210. Like KCP&L, Staff cites State ex rel. Danciger v. PSC, 205 S.W. 36 (Mo. 1918) as a controlling case for determining whether the CCN is a public utility. Under Danciger, the "public use" of a service is the deciding factor in determining whether an operation is a "public utility" under Missouri law. Under KCP&L's CCN proposal, KCP&L will be making this service available to the public who wish to use electric vehicle ("EV") charging stations. The Company will be providing electricity service to the charging stations at the Company's tariffed rates. The charging stations are separately metered, and the bills will be paid either by Nissan for the fast charging stations, or the host site owners for the remaining charging stations. The revenues from those stations receiving separate bills are identifiable by account, and the revenues from those stations where the usage is added to the customer's main meter can be established based on metered usage. From KCP&L's perspective, the CCN is no different than any other part of its regulated distribution system which it provides as a regulated public utility.

211. The Commission should conclude that KCP&L is providing electrical service to the EV charging stations as a public utility. The service will be available to any EV owner that wishes to avail themselves of the electric service. The Commission should conclude that the EV charging stations are part of the Company's regulated local distribution network which is necessary to provide electricity to the EVs. As such, KCP&L's CCN facilities should be treated as electric plant needed to provide electric service to EV charging stations and ultimately to EV owners as a public utility service.

212. In summary, the Commission should find and conclude that the CNN is a public utility service under Missouri law.

C. If So, Who Pays For It?

213. As explained in KCP&L's initial brief, KCP&L is requesting that the Commission include the plant-in-service related to the Clean Line Network as of May 31, 2015 (i.e. $730,000), as well as the O&M cost of $213,079. This represents about ten (10) percent of the total cost of the pilot project for KCP&L's Missouri operations. See Tr. 630. The Company estimates the annual impact of this request for a typical residential Missouri customer to be 43 cents per year, or just under 4 cents per month. See Tr. 567. KCP&L intends to proceed with the pilot program, notwithstanding the Commission decision on cost recovery at this juncture. See Tr. 583. As a result, KCP&L shareholders will be making the additional investments required to complete the program at least until the next general rate case.

214. Sierra Club offered its views on the EV-related issues for the first time in their initial brief. See Sierra Club Initial Brief at 13-28. Sierra Club clearly explained the potential of EV-charging including the following:

a. Widespread transportation electrification can lower electricity rates, reduce dependence on oil, cut greenhouse gas and criteria pollutant emissions, and support higher penetration of renewable energy.

b. Efficient integration of EVs onto the grid can reduce rates, improve reliability, and smooth integration of renewable energy. See Sierra Club Initial Brief at 14-16.

215. Sierra Club's discussion of the public benefits of EVs is similar to the public benefits discussed in the testimony of KCP&L witness Darrin Ives. See Ex. 119, Ives Supplemental Direct at 121; Ex. 120, Ives Rebuttal at 56-57. Since all customers will benefit

from this investment, it is logical that all pay for some portion of the investment. As explained in KCP&L's initial brief, KCP&L's proposal for cost recovery of a portion of the CCN investment and costs in this proceeding is a modest investment that is expected produce benefits for all customers. This proposal is similar to the rate base treatment of half of KCP&L's Smart Grid research project. See Tr. 600, 603. KCP&L hopes to learn from these installations, gathering information during the pilot period to be shared with stakeholders in developing a longer term view. KCP&L is interested in discussing with interested stakeholders issues related to this pilot program including, but not limited to, impacts on retail customers, impacts on KCP&L, pricing alternatives, and other issues. In the meantime, it is important that the Commission indicate that it supports this effort, especially at a time when the Company's load is flat or declining.

216. Staff suggests that if the Commission determines that CCN is a public utility service, then the Commission should "require KCPL to file tariff rate schedules that put the cost of the charging stations on those who charge their vehicles at them or who request their installation." See Staff Initial Brief at 124. KCP&L believes that it is logical to develop a specific tariff for the future operation of the EV-charging stations after the initial pilot project is completed. At that time, more information will be known regarding the cost and usage patterns of EV-charging stations. During the KCP&L pilot program, EV owners will not be asked to pay for the electricity since Nissan and the host site owners will be responsible for paying for the electricity used by the EV owners. As described above, the charging stations will be part of KCP&L's overall distribution system and about 10% of the CCN costs would be reflected in rates, if the Commission accepts KCP&L's proposal.

217. The Company therefore respectfully renews its request that the Commission include a modest portion of the expected costs of this program in the rates in this proceeding.

XII. <u>INCOME TAX-RELATED ISSUES (INCLUDING ACCUMULATED DEFERRED INCOME TAXES OR "ADIT"): WHAT ADJUSTMENTS, IF ANY, ARE NECESSARY TO ENSURE THAT KCP&L'S INCOME TAX ALLOWANCE, INCLUDING ADIT MATTERS, IS CALCULATED APPROPRIATELY?</u>

218. KCP&L fully addressed MECG's proposed income tax-related adjustments in its initial brief. Therefore, it is unnecessary to make a lengthy reply herein. However, a few additional comments may be helpful to clarify these technical issues.

219. As explained in KCP&L's initial brief, MECG witness Mr. Brosch has proposed four adjustments to the amount of ADIT in rate base. <u>See</u> Ex. 502, Brosch Direct at 4, 46-62. The first adjustment is to include the Construction Work in Progress ("CWIP") related ADIT liability balance in rate base. The first adjustment would reduce revenue requirement by $573,265 as of true-up. The second adjustment is to exclude the ADIT asset balance related to the lease on the KCP&L downtown office building ("1KC Lease") from rate base. The third adjustment is to exclude the ADIT asset balance related to deferred employee compensation and bonus pay from rate base. The second and third adjustments in the aggregate would reduce KCP&L's revenue requirement by $795,985 as of the true-up date in this case. And the fourth adjustment is to compute the amount of net operating loss ("NOL") carryforward ADIT asset in rate base on a KCP&L "stand alone" basis instead of using the amount computed under the Company's tax allocation agreement ("TAA") with GPE and its other subsidiaries. The fourth adjustment would reduce revenue requirement by $453,743 as of true-up. <u>See</u> Ex. 502, Brosch Direct at 4.

220. The Commission should reject each of the adjustments proposed by MECG to KCP&L's ADIT in rate base, and the adjustment (i.e. ADIT on CWIP) supported by Staff.

A. Inclusion of ADIT Liability Related To CWIP in Rate Base

221. In their initial briefs, Staff and MECG rely heavily upon the Commission's decision in Ameren Missouri 2012 rate case, Case No. ER-2012-0166. See Staff Initial Brief at 126-27; MECG Initial Brief at 107-08. This reliance upon the Ameren Missouri decision is misplaced. The record in this case reflects the fact KCP&L had a substantial NOL for the period in question that precluded KCP&L from receiving the tax cash benefit for tax basis differences related to CWIP. See Ex. 112, Hardesty Rebuttal at 11-12. Since KCP&L had a NOL that negated the benefits of the tax timing differences, KCP&L did not receive a "free loan" from the CWIP-related ADIT balance. It is unclear that an NOL was taken into account in the Ameren Missouri case relied upon by MECG and Staff.

222. As explained in KCP&L's initial brief, an NOL is created when, in any year, a taxpayer reports more deductions than it has taxable income. When an NOL must be carried forward, a portion of the deductions claimed by the taxpayer in the year that the NOL is created will not offset taxable income and not reduce the taxpayer's tax liability. As a result, the existence of the ADIT on CWIP does not provide any cost-free capital since it is negated by the existence of the NOL for the year. See Ex. 112, Hardesty Rebuttal at 11-12. Therefore, ratepayers have not been denied any tax cash benefit in the computation of Allowance for Funds Used During Construction and the ADIT liability should not be included in rate base prior to being placed in service. See Ex. 112, Hardesty Rebuttal at 3-5.

223. Since KCP&L did not receive the cost-free loan from CWIP-related ADIT balances since KCP&L was experiencing a NOL carryforward in 2014, the Commission should reject the adjustment proposed by MECG and Staff in this case.

B. Exclusion of ADIT Asset Related to the 1KC Lease from Rate Base

224. MECG argues that the accrued liability for the deferred rent payments on the 1KC Lease on KCP&L's books was not included in rate base, and therefore the ADIT on this tax timing difference should also be excluded from rate base. See MECG Initial Brief at 108-10. As explained by KCP&L witness, Melissa Hardesty, KCP&L has not included the accrued liability for the deferred rent payments on the 1KC Lease in rate base because the accrued liability is being amortized monthly as a reduction to rent expense in cost of service. This reduced rent expense is also included in KCP&L's lead lag computation of cash working capital. Therefore, the impact of this liability has been included in this case and the ADIT related to this liability should also be included in rate base. See Ex. 112, Hardesty Rebuttal at 6-7.

225. MECG discounts this fact, and suggests that KCP&L's exclusion is not the "financial equivalent" of fully including the 1KC liability in rate base. See MECG Initial Brief at 109. Financial equivalence is not the appropriate test to be applied. Instead, the Commission should recognize that KCP&L's treatment of the 1KC Lease is consistent with past practices and appropriately reflects the tax treatment associated with the rent abatement associated with the 1 KC Lease.

C. Exclusion of ADIT Asset Related To Employee Compensation And Bonus Pay From Rate Base

226. MECG also proposes to exclude the ADIT asset related to employee compensation and bonus pay from rate base. See MECG Initial Brief at 110-11. This proposed MECG adjustment is similar to the proposal for the 1KC Lease, whereby the liability for the accrued employee compensation and bonus pay is not in rate base so the ADIT asset related to this tax timing difference should also be excluded. Both deferred compensation and incentive compensation are included in the overall cash working capital computations and the payroll

expense included in cost of service. Therefore, the impact of this liability has been included in this case and the ADIT asset related to this liability should be included in rate base. See Ex. 112, Hardesty Rebuttal at 7-8.

D. Computation of ADIT Assets Related To NOLs on a KCP&L Stand-Alone Basis

227. MECG argues that the Affiliate Transaction Rule applies to KCP&L's TAA. See MECG Initial Brief at 112. However, this is a misapplication and misinterpretation of the Commission's Affiliate Transaction Rule. In fact, the Commission has already resolved this question in the 2014 Ameren Missouri rate case, Case No. ER-2014-0258. The Commission specifically held that the affiliate transaction rule does not apply to TAAs because there is no transaction involved:

> D. But here, where there is no transaction, the restrictions of the rule have no meaning. How could the fair market price or the fully distributed cost even be calculated? MIEC can only fall back to the basic policy behind the affiliate transaction rule, which reasonably states that regulated utilities should not be allowed to structure corporate arrangements in a way that disadvantages regulated utilities and thereby disadvantages ratepayers. See Report And Order, p. 21, Re Ameren Missouri, Case No. ER-2014-0258.

228. MECG next argues that the Ameren Missouri decision should be disregarded here because MECG believes the KCP&L TAA does not benefit KCP&L and its ratepayers. However, this is not correct. While there have not been immediate benefits to KCP&L ratepayers in recent years since the agreement was entered into in 2008, this does not demonstrate that the TAA is somehow detrimental to KCP&L and its ratepayers. At some point in the future, KCP&L and its ratepayers are likely to receive benefits from the consolidated tax filings done on behalf of GPE and its affiliates.

229. MECG's witness has identified and selected a single point in time when KCP&L may be worse off as a result of consolidated filing to perform his hypothetical assessment of

available cost-free capital. This hypothetical computation is just that, "hypothetical," and it does not represent the actual economics for the Company. See Ex. 112, Hardesty Rebuttal at 9.

230. Ignoring this fact, MECG witness Brosch proposes to compute this amount as if the Company filed and continues to file its tax returns on a "stand alone" basis. He proposes that the amount be computed as if the Company didn't file as a member of the consolidated tax return group. He proposes that this Commission impute an additional amount of cost-free capital equal to the additional amount that would have had been received as of the end of the true up period had KCP&L filed on this "stand alone" basis. He estimates that, on a hypothetical "stand alone" basis KCP&L would have been able to use more of its own NOL carryforwards and should reduce its NOL carryforward deferred tax assets in its rate base calculation. See Ex. 112, Hardesty Rebuttal at 14.

231. As explained by Ms. Hardesty, Mr. Brosch proposes to impute cost-free capital that the Company did not receive. KCP&L files as part of a consolidated group of GPE affiliates. Overall, filing consolidated benefits the entire group. However, it is the nature of a consolidated filing that any given member may be better off in some years as a result of consolidated filing and worse off in other years.

232. This adjustment involves one that is similar to the one the Commission considered in the recent Ameren rate case, Case No. ER-2014-0258. KCP&L believes the Commission correctly decided the issue in that case and would urge the Commission to rule the same way in this proceeding. In the Ameren case, the Commission stated page 22 of the Report And Order:

> Ameren Missouri proposes to use a NOL C[arryforward] it has actually accumulated rather than a hypothetical NOLC[arryforward] proposed by MIEC and supported by Staff, MIEC advocates a policy that arrangements between affiliates should always be interpreted in a manner that benefits ratepayers, even if that results in a detriment to the utility. There is no basis in law or fact for such a policy. The Commission must balance the interest of ratepayers and shareholders

to set just and reasonable rates. Ameren Missouri's position is fair and will be adopted.

233. Both utilities (Ameren and KCP&L) used the consolidated NOL, as allocated to the utility, under the applicable TAA in place between all subsidiaries of each consolidated group to compute the NOL ADIT asset included in rate base. See Ex. 112, Hardesty Rebuttal at 18.

234. For the reasons stated herein, KCP&L respectfully urges the Commission to reject the proposed adjustments to its ADIT in rate base proposed by MECG and the adjustment (i.e. ADIT on CWIP) supported by Staff.

XIII. CLASS COST OF SERVICE, RATE DESIGN, TARIFF RULES AND REGULATIONS

A. Class Cost of Service

235. As indicated in its initial brief (See KCP&L Initial Brief at 135) and during the hearing (See Tr. 333-334), KCP&L does not object to the provision of the Non-Unanimous Stipulation and Agreement as to Certain Issues ("Rate Design Stipulation") calling for class revenue responsibility to be increased on an equal percentage basis across the board because this was KCP&L's recommendation.

B. Rate Design

1. Certain Provisions of the Non-Unanimous Rate Design Stipulation are Unreasonable

(a) Principles of Cost-Based Rates, Fairness and Equity Require Increasing KCP&L's $9/month Residential Customer Charge

236. Some parties argue that increasing KCP&L's residential customer charge is inimical to energy efficiency goals. See Staff Initial Brief at 131-132; OPC Initial Brief at 70-71; DE Initial Brief at 8-10; Sierra Club Initial Brief at 33-34. Most of these arguments have

already been adequately refuted (See KCP&L Initial Brief at 139-141), but a few more comments are warranted here. DE argues – with no cite to any record evidence – that "[T]here is a clear consensus that raising the customer charge will be detrimental to the public policy goal of valuing demand-side investments equal to traditional utility supply-side investments." See DE Initial Brief at 8-9. Although KCP&L does not understand the meaning of this sentence, KCP&L would suggest that loading the entirety of the residential rate increase in this case on per kWh rate elements with no increase to the customer charge, as recommended by the signatories to the Non-Unanimous Rate Design Stipulation, will increase KCP&L's revenue risk, whether driven by energy efficiency, weather or other factors. This increased revenue risk would not be conducive to KCP&L's continued offering of MEEIA programs.

237. Some parties argue that the recent Ameren decision sets forth this Commission's current policy that electric residential customer charges should not be increased. See OPC Initial Brief at 69; DE Initial Brief at 8; MECG Initial Brief at 119. KCP&L disagrees because the facts and evidence in the Ameren case were decidedly different than the facts and record evidence in this case. Specifically, in the Ameren case, Staff's class cost of service study supported ". . . recovery of a customer charge of $8.11" which was very close to Ameren's $8/month customer charge. In re Union Electric Co., Case No. ER-2014-0258, Report and Order at 75-76 (Apr. 29, 2014). Unlike the Ameren case, however, the evidence in this record establishes that both Staff and OPC have calculated KCP&L's residential customer-related costs at $11.88/month, which is substantially higher than KCP&L's current $9/month residential customer charge. See Tr. 1987:11-23; Ex. 247 Corrected Testimony of R. Kliethermes; Ex. 316, Dismukes Direct Correction; and Ex. 317, Corrected Dismukes Sch. DED-12.

238. Some parties argue that increasing KCP&L's residential customer charge would have a larger than average impact on low-use customers and, by extension, on low-income customers. See DE Initial Brief at 9-10; OPC Initial Brief at 70. First, low-use customers have lower than average bills and although increasing the customer charge has a larger impact in terms of percentage increase, it needs to be remembered that the dollar impact of a customer charge increase will be exactly the same for each and every residential customer. Second, retaining KCP&L's current $9/month residential customer charge would place the lion's share of the residential rate increase in this case squarely on the backs of higher than average use customers. As to whether low-use translates into low-income, the record evidence demonstrates that KCP&L's low-income customers have usage characteristics that are representative of the entire residential class, meaning that low-use does not correlate to low-income. See Ex. 134, Rush Direct at 67-70. Moreover, in an effort to help ease the impact of this rate increase on low-income customers, KCP&L has proposed to expand its Economic Relief Pilot Program ("ERPP") in terms of both number of customers to be served and magnitude of assistance to be available. Id. at 70-71.

239. In sum, KCP&L simply asks that the Commission establish a cost-based residential customer charge. The record evidence demonstrates that to be cost-based, KCP&L's residential charge must increase to a minimum of $11.88/month and up to $25/month.

(b) Studies of Two-Part Time of Day and Real-Time Pricing

240. Except for KCP&L, DE was the only other party to substantively address this issue in its initial brief. See DE Initial Brief at 10-11. KCP&L continues to oppose that portion of the Non-Unanimous Rate Design Stipulation that calls for KCP&L to complete a study regarding these issues within two years. KCP&L's existing metering equipment and billing system are not suitable to implementation of two-part time of day and real-time pricing tariffs, so

it is premature for KCP&L to commit to, or for the Commission to order KCP&L to, study such tariffs. See Ex. 135, Rush Rebuttal at 61:6-16.

(c) Standby Service Tariff

241. Except for KCP&L, DE was the only other party to substantively address this issue in its initial brief. See DE Initial Brief at 14-16. DE has made no showing that KCP&L's current standby service tariff is in any way inadequate, unjust or unreasonable. As such, KCP&L continues to oppose that portion of the June 16, 2015 Rate Design Stipulation that calls for KCP&L to establish a working group to review its standby service tariff and file a revised standby service tariff in its next general rate proceeding. In addition to the objections raised in its initial brief, KCP&L also opposes this provision on the basis that there may not be sufficient time to accomplish this work prior to the filing of KCP&L's next rate case. If an FAC and/or trackers are denied on a wholesale basis, it is very likely that KCP&L will be required to file another rate case immediately upon the conclusion of this case. It would be unreasonable to expect KCP&L to accomplish the work contemplated by the Rate Design Stipulation regarding the standby service tariff in such a short period of time.

(d) Revenue Losses From Rate Switching Due to Large General Service ("LGS") and Large Power ("LP") Rate Design Changes

242. KCP&L requests that the Commission approve the Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, and Rate Switcher Revenue Adjustments ("Billing Determinants Stipulation") filed herein on August 3, 2015 as resolution to this issue. Absent approval of the Billing Determinants Stipulation, KCP&L requests that the Commission order a revenue adjustment of $590,000 to compensate for revenue losses that would otherwise occur due to rate switching resulting from the LGS and LP

rate design changes proposed in the Rate Design Stipulation. See Ex. 167, Rush True-Up Rebuttal at 2-3.

C. **Tariff Rules and Regulations**

243. As none of the other parties addressed the return check charge or the collection charge in their initial briefs, KCP&L has nothing to add on these issues.

244. Except for KCP&L, DE was the only other party to address the issue relating to economic development rider ("EDR") and urban core development ("UCD") rider in KCP&L's tariff. See DE Initial Brief at 11-14. DE cites a provision of MEEIA – "the commission shall ensure that utility financial incentives are aligned with helping customers use energy more efficiently" (Section 393.1075.3) – as support for its position on EDR/UCD. According to DE's argument, KCP&L's EDR and UCD is a utility incentive that needs to be in alignment with MEEIA. See DE Initial Brief at 12. Unfortunately for DE, it has misconstrued this provision of the statute. The "utility financial incentives" contemplated by section 393.1075.3 RSMo. relate to items that act as incentives (or disincentives) for utilities. For example, if a utility is highly reliant on per kWh rate elements to recover fixed costs, then it will clearly be against that utility's financial interest to encourage its customers to use less electricity. Of course, DE's position is that 100% of the residential rate increase in this case should be recovered through increases to per kWh rate elements. See DE Initial Brief at 7. Nor did DE take the opportunity to support revenue decoupling in its initial brief, a regulatory mechanism which eliminates the financial disincentive for utilities to promote energy efficiency, demand response and other ways for customers to reduce consumption or load. See Tr. 432:21-433:15. In light of this failure by DE to promote alignment of financial incentives for KCP&L as well as its misreading of Section 393.1075.3, little weight should be given to its proposals regarding KCP&L's EDR/UCD.

XIV. LOW-INCOME WEATHERIZATION

A. Staff Has Removed the Income Eligible Weatherization ("IEW") Program Costs From Base Rates

245. Staff states on page 135 of its initial brief that "should the Commission order KCPL to collect income-eligible weatherization funds through its MEEIA program, base rates must be adjusted accordingly." This is not correct. If the Commission determines that the IEW program should be funded through MEEIA, nothing needs to be adjusted since Staff has already taken out the IEW program from KCP&L's cost of service. See Tr. 1967. Staff agrees that the IEW program costs must be added back into KCP&L's cost of service should the Commission determine that the IEW program should be funded through base rates. See Tr. 1967.

B. MEEIA Funding Ensures that the IEW Program Will Have the Maximum Flexibility to Adapt to Changing Circumstances

246. The underlying premise of OPC and DE's argument is that IEW programs are best suited to be funded in base rates because then the funding and distribution processes are "locked down" for the foreseeable future. In reality, the IEW program experiences fluctuation and change which is better suited to the flexibility of MEEIA.

247. The main issue raised by OPC and DE concerns funding stability. Even though OPC indicates that it does not have any reason to believe that KCP&L's MEEIA programs won't continue (See Tr. 1972), OPC argues that moving the IEW program into the Company's base rates is needed to "assure program consistency and continuity". See OPC Initial Brief at 78. DE argues that the IEW program should be protected from MEEIA's volatility. See DE Initial Brief at 17.

248. Both OPC and DE don't mention that the IEW program's instability has nothing to do with whether or not the program is funded in MEEIA or base rates. There is currently a surplus of over $1 million that has been funded by ratepayers but has not been distributed to the

agencies that administer the programs. This surplus is in large part due to the fact that the largest recipient of the funding discontinued its participation in the program. See Ex. 135, Rush Rebuttal at 42. Because the IEW program was a MEEIA program, KCP&L was able to consult with the Demand Side Management Advisory Group ("DSMAG") and find other ways to distribute the money. See Tr. 1957-1958. This flexibility and accountability is the main reason why the IEW program should remain in MEEIA. There would be no existing DSMAG to address ongoing issues if the IEW program is moved to base rates.

249. OPC indicates at page 78 of its Initial Brief, that one of the very important reasons to fund IEW through base rates involves the need to address weatherization in multi-family housing. OPC argues that funding IEW through base rates allows IEW funds to be made available to multi-family homes. The Company believes that there would be more flexibility to offer multi-family weatherization programs though MEEIA than though base rate funding because offering multi family programs though base rates would require tariff modifications. See Tr. 1958. Collecting through MEEIA offers more flexibility to adjust the IEW programs to current conditions. See Tr. 1959. The DSMAG allows for collaboration with the local participants to work through the multi-family issues and identify ways to spend the money. See Tr. 1957.

XV. ECONOMIC RELIEF PILOT PROGRAM

250. Staff continues to advocate the mathematically impossible: expand the number of customers eligible to participate in ERPP and increase the magnitude of the bill credits available to those customers while maintaining current funding levels. Staff Initial Brief at 135. KCP&L has already explained why this is not possible and will not repeat those arguments here. See KCP&L Initial Brief at 148-149.

XVI. DECOUPLING

251. Staff addressed decoupling in summary terms (Staff's Initial Brief at 137-138), suggesting that the Commission explore the topic through a working docket established in Case No. AW-2015-0282, and KCP&L agrees with this Staff recommendation.

252. Sierra Club gives too much weight to this working docket, however, when it argues that "[I]n lieu of granting the Company's proposal to increase its residential fixed customer charge, the Commission should investigate and later implement revenue decoupling ….." See Sierra Club Initial Brief at 35. This Sierra Club argument suggests that implementation of revenue decoupling eliminates any concerns regarding the level of fixed residential charges. This is not true because even Staff agrees that reliance on per kWh rate elements to recover fixed costs of providing service that do not vary with the amount of electricity used invariably leads to subsidization of lower-than-average residential electricity users by higher than average residential electricity users. See Tr. 455:18-457:1. So while KCP&L agrees that revenue decoupling has the potential to provide many benefits, it is not a panacea. Moreover, the mere possibility that revenue decoupling may be implemented at some unknown time in the future serves as no reasonable basis to ignore the evidence in this record that maintaining KCP&L's current $9/month customer charge – which does not recover all of the fixed costs of serving residential customers – will require higher than average use customers to subsidize the cost of serving lower than average use customers by at least $2.88/month, on average. See Tr. 1987:11-23; Ex. 247, Corrected Testimony of R. Kliethermes; Ex. 316, Dismukes Direct Correction; and Ex. 317, Corrected Dismukes Sch. DED-12.

XVII. TRUE-UP

253. At the true-up hearing held on July 20, five revenue requirement issues were discussed: 1) the impact of IPL's membership in SPP as a transmission owner on transmission

expenses of KCP&L; 2) the impact of rate switching on the Company's revenues as a result of the rate design for LGS and LP customers in the Non-Unanimous Rate Design Stipulation; 3) Iatan 2 and Common Amortization; 4) rate case expense; and 5) the impact on fuel and purchased power expense of the expiration of two contracts between KCP&L and the Kansas Municipal Energy Agency. The IPL/SPP issue is discussed earlier in this brief (Section V. Transmission Fees Expense). The LGS/LP rate switcher issue is the subject of a proposed settlement and is addressed earlier in this brief (Section XIII.B1.(d)). OPC's issue regarding Iatan 2 and Common O&M amortizations in its true-up direct testimony was dropped at the hearing, as Commission approval of the July 1, 2015 Partial Non-Unanimous Stipulation and Agreement as to True-Up, Depreciation and Other Miscellaneous Issues ("True-Up Stipulation") addressed OPC's concerns. See Tr. 2062. Rate case expense was also raised by OPC in its true-up direct testimony. That issue is addressed earlier in this brief (Section IX Rate Case Expense). Consistent with the True-Up Stipulation, KCP&L will provide updated rate case expense information to the parties on August 12, 2015 so that the Commission may be provided with updated revenue requirement positions of the parties on rate case expense. See Ex. 165, Klote True-Up Direct at 3.

254. The final true up revenue issue involves the fuel and purchased power expense of the Company. Staff is not recognizing the fact that two capacity sale agreements between KCP&L and the KMEA will expire on September 30, 2015, the day after rates are expected to become effective. As these contracts are set to expire, they should not be included in the Company's cost of service. Staff, on the other hand, annualizes these contracts and includes approximately $4.1 million in wholesale revenue as an offset to KCP&L's expenses in its cost of service. See Ex. 163, Crawford True-Up Rebuttal at 6. .

255. Staff claims that including the wholesale revenue for the two KMEA capacity agreements in the Company's cost of service is necessary because the agreements expire outside the May 31, 2015 true up cutoff date. See Ex. 251, Featherstone True-Up Rebuttal at 12. Staff's position is not consistent with the concept of a true-up cutoff. As of May 31, 2015 it is known that the two wholesale contracts will expire on September 30, 2015 and the amount of revenue that the Company will no longer be receiving is also measurable. Staff's cost of service should be adjusted upwards by $1.453 million (total Company basis) to reflect the net impact on the Company's cost of service from the removal of the two KMEA contracts. See Ex. 163, Crawford True-Up Rebuttal at 7.

256. Staff's position on the inclusion of the KMEA contracts should be rejected by the Commission as it adds a third requirement to the true-up cutoff— in addition to being known and measurable, Staff insists that the event must also have actually occurred. This third requirement is entirely a creation of Staff, it has never been part of the true-up cutoff requirement. Moreover, Staff's position is inconsistent with other adjustments it has made to the Company's revenue requirement revenues that occurred outside of the May 31, 2015 cutoff. A KMEA load following contract expired on May 31, 2015 and a new contract became effective June 1, 2015 and runs until May 31, 2018. The new contract increased the per unit cost from the level of the old contract. Staff has used the increased costs in its adjustment of firm wholesale revenue. See Ex. 164, Ives True-Up Rebuttal at 9. Just as Staff has gone beyond the cutoff period to reflect the higher costs (which results in higher revenues for the Company and a reduction in the cost of service) of the KMEA load following contract, it should also reflect the situation where the Company's revenues will decrease due to the expiration of the KMEA contracts on September

30 of this year. The Commission should address Staff's inconsistent treatment of the cutoff period by increasing Staff's cost of service by $1.453 million (total Company basis).

XVIII. CONCLUSION

257. Staff, OPC, DOE, MIEC and MECG ask the Commission to set rates on the basis of specific point ROE recommendations (9.25% for Staff; 9% for OPC; 9% for DOE; and 9.1% for MIEC and MECG) that are lower than all of the 23 ROEs established by utility regulatory commissions across the United States for vertically integrated utilities like KCP&L during the twelve months ending April 30, 2015. See Ex. 116, Hevert Rebuttal at Sch. RBH-20. Staff, OPC, MIEC and MECG oppose Commission authorization of an FAC for KCP&L even though KCP&L is currently one of only two electric utilities in the nation without an FAC. See Ex. 129, Overcast Rebuttal at Sch. HEO-2, p. 2. Staff, OPC, MIEC and MECG oppose regulatory recognition (whether through an FAC, tracker or rate allowance based on forecast expenses) of significant SPP transmission expense increases, property tax increases and CIP/cyber-security O&M expense increases that will doubtless occur during the period when rates set in this case will be effective. See Ex. 120, Ives Rebuttal at 10:5-6. Staff, OPC and MECG propose an arbitrary disallowance of 50% of KCP&L's prudently incurred rate case expense, an abrupt reversal of the long-standing Commission practice of reflecting 100% of prudently incurred rate case expense in revenue requirement. See KCP&L Initial Brief at 89-90, n. 33.

258. Commission adoption of these positions advanced by Staff, OPC, MIEC and MECG will (1) result in continued substantial earnings shortfalls for KCP&L relative to whatever ROE the Commission uses to set rates in this case, and (2) require KCP&L to immediately file another general rate proceeding. It cannot be credibly argued that this is a rational or sustainable regulatory policy that will lead to appropriate investment levels and service quality for customers over the long-haul. As such, KCP&L asks the Commission to

reject these Staff, OPC, MIEC and MECG positions and instead adopt alternative positions proposed by KCP&L.

259. Commission adoption of the positions proposed by KCP&L, on the other hand, will improve its earnings performance while also protecting customers from paying higher than actual fuel and purchased power (including SPP transmission expense) costs, property tax expenses and CIP/cyber-security expenses. KCP&L's alternative proposals, therefore, represent a rational and sustainable approach tailored to Missouri's regulatory customs and practices that will maintain its financial integrity without requiring the immediate filing of another general rate[36] proceeding on the heels of this one and enable it to continue improving the electric service provided to its customers.

260. For all of the foregoing reasons, therefore, KCP&L respectfully asks the Commission to adopt its position on each of the issues addressed herein.

Respectfully submitted,

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[36] However, the immediate filing of a rate case will not eliminate the Company's earnings shortfalls as there is no opportunity to recover these shortfalls in a future rate case. See Ex. 121, Ives Surrebuttal at 32-33.

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 3rd day of August, 2015, to all counsel of record.

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