

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

In the Matter of the Application of Kansas City)
Power and Light Company for Approval to Make)
Certain Changes in its Charges for Electric Service) **Case No. ER-2009-0089**
to Continue the Implementation of its Regulatory) **Tariff No. JE-2009-0192**
Plan.)

In the Matter of the Tariff Filing of Aquila, Inc.)
d/b/a KCP&L Greater Missouri Operations)
Company, to Implement a General Rate Increase) **Case No. ER-2009-0090**
for Retail Electric Service Provided to Customers) **Tariff No. JE-2009-0913**
in its Missouri Service Areas it formerly served as)
Aquila Networks—MPS and Aquila Networks—)
L&P.)

In the Matter of the Tariff Filing of Aquila, Inc.)
d/b/a KCP&L Greater Missouri Operations)
Company, to Implement a General Rate Increase) **Case No. HR-2009-0092**
for Retail Steam Heating Service Provided to) **Tariff No. YH-2009-0195**
Customers in its Missouri Service Area it formerly)
served as Aquila Networks—L&P.)

**STAFF'S RESPONSE TO THE STATUS REPORT AND MOTION TO
EXTEND PERIOD TO DEMONSTRATE COMPLIANCE WITH CERTAIN
IN-SERVICE CRITERIA OF KANSAS CITY POWER & LIGHT COMPANY
AND KCP&L GREATER MISSOURI OPERATIONS COMPANY**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and, for its response to the status report and motion to extend period to demonstrate compliance with certain in-service criteria of Kansas City Power & Light Company ("KCPL") and KCP&L Greater Missouri Operations Company ("GMO") (jointly "Companies"), states:

Summary

1. Staff primarily recommends the Commission not modify the procedural schedules in these cases. The current schedule is one Companies requested in October 2008 and elected on January 20, 2009. The event—damage to the Iatan 1 turbine rotor shaft—upon which Companies seek to revise the procedural schedules was not an unforeseen event beyond the control of Companies and is within the type of events contemplated when the parties proposed and the Commission adopted the procedural schedules in these cases. KCPL has no “right” under the Stipulation and Agreement in Case No. EM-2005-0329 to include in this rate case plant in service as of April 30, 2009, nor does GMO have any such “right.” KCPL unilaterally adjusted the filing of its rate case based on a 2007 test year from February 1, 2008 to September 5, 2008 when the Stipulation and Agreement in Case No. EM-2005-0329 specified a February 1, 2008 filing date.

2. If the Commission determines to allow Iatan 1 improvements as an isolated adjustment after March 31, 2009 or extend the true-up date to April 30, 2009, Staff secondarily recommends the Commission impose the conditions following:

- a. Extend the target new tariff rate sheets effective date to September 5, 2009
- b. Agreement of Companies that Iatan 1 costs that exceed the base costs will be included in rates interim subject to refund based on a true-up of costs in Companies’ next electric rate case;
- c. To the extent Companies are shown to have overstated Iatan 1 costs authorized as of April 30, 2009, then if any of those overstated costs are subsequently found to be imprudent, the Companies will be deemed to have violated the Commission’s order in Case No. ER-2009-0089.
- d. Depreciation reserve attributable to Iatan 1 accrued post March 31, 2009 be included in setting rates;

- e. Deferred income tax reserve attributable to Iatan 1 accrued post March 31, 2009 be included in setting rates;
- f. Environmental credits for energy production from Iatan 1 be applied as an offset to the Iatan 1 plant balance;
- g. The value of power generated by Iatan 1 net of variable costs be credited to the costs to be placed in service.

The costs Companies are relying on for driving rates in his case have changed substantially at different points in the case. There are data requests to which Companies have not provided the information requested. Staff opposes expanding the scope of Staff's review without providing additional time to perform that review or reducing the time available to Staff to complete its review, in part due to the difficulties Staff has encountered in obtaining information from Companies through data requests.

Background and Analysis

3. In its November 3, 2008 *Order Setting Procedural Schedules*, the Commission ordered one schedule for all three cases that included a March 31, 2009 true-up cutoff date and a contemplated August 5, 2009 tariff rate sheets effective date. Recognizing that the inclusion in the "true-up period of the Iatan projects could be significant," the Commission "set a date [(January 20, 2009)] for the Companies to request that the Commission extend the true-up period, suspend the tariffs, and alter the procedural schedules."

4. On January 20, 2009 Companies filed a pleading stating, "The Companies hereby notify the Commission that they do not seek to extend the true-up period in these cases beyond the March 31, 2009 date established in the *Order Setting Procedural Schedules*." Twenty-two days later,

on February 11, 2009, Companies filed a pleading advising the Commission that seven days earlier—February 4, 2009—that the Iatan 1 unit tripped during start-up activities due to vibrations in the turbine that exceeded operating parameters, “that the shape of the rotor shaft had changed and that the unit could not be operated with the shaft in its present condition.” They further advised that on February 10, 2009 they shipped the turbine rotor shaft to Chicago, Illinois, for evaluation and repair, and that their schedule for returning Iatan 1 to service might be delayed by one to two months. They also related that absent this event KCPL “was on schedule to complete all in-service criteria by the first week of March.” In response, by order dated February 17, 2009, the Commission ordered the parties to file a status report by March 2, 2009 identifying any procedural issues for the Commission.

5. On March 2, 2009 Companies filed their status report and a motion. There Companies confirm the Iatan 1 turbine rotor shaft required repair and inform that the repaired rotor shaft was returned to the Iatan site on February 28, 2009. They state they anticipate it will take ten to twelve days to reassemble the turbine before reinitiating start-up activities and that Iatan 1 will not be producing electricity at or near full capacity until on or about March 22, 2009 and, as a result, the environmental improvements to Iatan 1 will not satisfy by March 31, 2009 the in-service criteria the Staff is in part relying on for determining whether the improvements to Iatan 1 satisfy the Proposition No. 1 (§393.135 RSMo 2000) requirement of being “fully operational and used for service,” a prerequisite for the Commission to consider the costs of those improvements in setting rates. Companies state in their pleading they anticipate the improvements “will likely not satisfy [Staff’s] in-service criteria until the second or third week of April 2009.”

6. In their March 2, 2009 status report and motion Applicants request the Commission to “extend until April 30, 2009 the deadline for demonstrating that the AQCS [(air quality control system)] equipment satisfies the technical in-service criteria,” but make no other changes to the ordered procedural schedules. If the Commission rejects that request, Companies alternatively request the Commission to “amend the procedural schedules by extending the ‘End of True-Up Period’ until April 30, 2009, and similarly extending by approximately one month the dates provided in the procedural schedule related to the True-Up Proceeding beginning with the ‘Closed Book True-Up Data Date’ and continuing through to ‘Effective Date for Tariffs,’” but make no changes to the previously scheduled dates for Evidentiary Hearings, Initial Post Hearing Briefs, Reply Briefs, and Proposed Findings of Fact and Conclusions of Law. Companies are requesting an isolated adjustment beyond the true-up date of March 31, 2009, for their improvements to Iatan 1, if the improvements meet Staff’s in-service criteria by April 30, 2009, or, as a secondary alternative, extending the true-up date to April 30, 2009.

7. In its *Order Setting Procedural Schedules* it issued November 30, 2008, the Commission, at pages 2-5 , stated:

The procedural schedules in these matters are complicated by several factors. The first complication is that three large utility rate cases were filed on the same date with the same effective date for each tariff. Because many of the same personnel and experts for Staff, Public Counsel, the intervening parties, and the Companies will necessarily be involved in all three cases, this puts a strain on the resources of the parties and on the Commission. On the other hand, since these companies are so closely intertwined, it makes sense to have the cases on a similar schedule.

Another complication to this procedural schedule, and one reason the parties could not agree about the schedule, has to do with the true-up date. Traditionally, when a large utility files a request for a general rate increase, it files a tariff with a 30-day effective date. The Commission typically suspends the tariff for 120 days plus

six months, thus completing a rate case within an eleven-month period. Because of previous agreements between some of the parties and KCPL, however, the Companies filed their tariffs with an effective date that was eleven months from the time of filing. Thus, the cases were set on an eleven-month time frame without any Commission action. As Staff explained in detail, the schedule for completing the cases within the eleven-month period is difficult if an April 30, 2009 true-up period is utilized. ***Having the true-up period as late as April 30, 2009, does not allow sufficient time for true-up testimony and hearings or for Commission deliberations and issuance of a Report and Order with an appropriate effective date if the tariff sheets are not suspended for at least one month.*** (Emphasis added.)

Without suspending the tariff sheets, the true-up period would need to end on March 30, 2009. The Companies cannot, however, be certain that improvements at their Iatan I facility will be completed in time to satisfy the requirements of a March 31, 2009 true-up date. The Companies want to have the air quality control equipment and other improvements at Iatan I included in the true-up period.

The Companies have stated that delaying the effective date of the new rates would result in significant cost to them. An April 30, 2009 true-up period, however, would require that the Commission postpone the hearings in this matter approximately one month from what is currently scheduled.

The Companies have proposed two procedural schedules. The first of those schedules is based on an April 30, 2009 true-up date with an August 5, 2009 effective date for the tariff sheets. The second of these schedules assumes a March 31, 2009 true-up date with an August 5, 2009 effective date for the tariff sheets. The first schedule is strongly objected to by Staff, Public Counsel, and the Industrial Intervenors because it tends to shorten the time between the true-up filings and proceedings and the resolution of the case so that deadlines would be difficult to meet.² The Commission also finds that schedule unacceptable. The second schedule is basically the same schedule as the proposal set forth by Staff.

The statutes set out that rate cases are to be the Commission's first priority and also set out a time frame in which those cases shall be decided. Thus, the Commission is reluctant to extend the effective date of the tariffs beyond the eleven-month time frame unless absolutely necessary. The Commission set its original hearing schedule so that it would have sufficient time for the filing and review of briefs, true-up hearings, deliberations, and sufficient time before the effective dates of its final orders. In balancing the benefits and detriments to all the parties and making certain that the Commission has sufficient time to hear all arguments, review all the

² For example, the schedule calls for true-up rebuttal testimony to be filed on Memorial Day, only four days after the true-up testimony was filed and the day before the true-up hearing begins.

evidence, and make a sound decision with a reasonable effective date, the Commission determines that the proposal as set out by the Companies and Staff is the most appropriate schedule with slight modifications. The Commission shall set the true-up period to end on March 31, 2009, and shall adopt Staff's proposed procedural schedule that includes the March 31, 2009 true-up date and August 5, 2009 tariff effective dates. The Commission recognizes, however, that the inclusion in the true-up period of the Iatan projects could be significant. Thus, the Commission shall also set a date for the Companies to request that the Commission extend the true-up period, suspend the tariffs, and alter the procedural schedules.³ (Footnotes in original.)

8. Staff's detailed explanation of the difficulty of completing these rate cases within eleven months with an April 30, 2009 true-up date referenced by the Commission in its foregoing order follows:

17. Given that the true-up encompasses for both KCPL and Aquila the intended completion and in-service date of the Iatan 1 environmental enhancements,⁴ the true-up has great potential for major contested issues. An April 30, 2009 true-up date and an August 5, 2009 tariff effective date provides an intervening period of 97 days. The Staff is aware the Commission desires a period of at least 90 days between the close of all evidentiary hearings and the date a Commission order approving new tariff sheets becomes effective to allow sufficient time for briefing (about 30 days), Commission deliberations (about 30 days) and new tariff sheets review and approval (about 30 days).

18. It is the Staff's experience in this case that it takes KCPL and Aquila over three weeks from the end-of-a-month period to provide updates to their investment, revenues, fuel and purchased power, payroll and other costs through the end of that end-of-month period. Therefore, based on an April 30, 2009 true-up date and in light of the time needed to review that data, complete the adjustments necessary to update the revenue requirement from September 30, 2008 to the April 30, 2009 true-up date and draft true-up direct testimony yields the reasonable date of June 9, 2009 for filing true-up testimony and a June 15-16, 2009 true-up hearing date. Staff is also responsible to complete the true-up reconciliation during this time frame for the four revenue requirements. With briefs following the true-up hearing the earliest the case could reasonably be fully briefed to the Commission would be June 23, 2009. With an August 5, 2009 date for new tariff sheets to be effective the

³ The Commission puts the Companies on notice that if the true-up period is extended, there is a possibility that the tariff effective date and true-up procedural schedules will also need to be extended.

⁴ For Aquila this also encompasses construction at Aquila's Sibley and Jeffrey Energy Center generating facilities.

Commission would have to complete its deliberations on major true-up issues, if there are major true-up items in dispute, issue a Report and Order and approve tariff sheets all within a period of 43 days. Thus, the Staff is unable to propose a schedule that is reasonable to the Commission and to the parties when constrained by an April 30, 2009 true-up date—which KCPL and Aquila have stated they need to address the construction and in-service dates for its Iatan 1 environmental enhancements, an August 5, 2009 new tariff sheets effective date and maintaining 90 days between the end of the main evidentiary hearing and the tariff effective date of August 5, 2009.

19. The only solutions apparent to the Staff are to either use an earlier true-up date or extend the anticipated effective date of new tariff sheets from August 5, 2009. The alternative procedural schedules the Staff proposes are based on these two approaches and are designed for Case Nos. ER-2009-0089, ER-2009-0090 and HR-2009-0092. Both schedules allow four weeks of main evidentiary hearing time for presenting the non-true-up evidence in all three cases—ER-2009-0089, ER-2009-0090 and HR-2009-0092. The first alternative is predicated on new tariff sheets being effective by August 5, 2009 and, therefore, necessarily, is also based on a true-up date of March 31, 2009. The second alternative is predicated on a true-up date of April 30, 2009 and, therefore, necessarily is also based on new tariff sheets being effective by September 5, 2009.

20. The Staff recognizes that the second alternative requires either that KCPL and Aquila extend the effective date of their pending tariff sheets, or that the Commission suspend them under the authority it has in Sections 393.150 and 393.290, RSMo. 2000.⁵ The Commission will recall that the proposed tariff sheets filed by KCPL and Aquila on September 5, 2008 bear effective date of August 5, 2009 and can be further suspended by KCPL and Aquila, on their own or by the Commission, pursuant to Section 393.150, RSMo. 2000. The Staff notes that the Stipulation and Agreement the Commission approved in Case No. EO-2005-0329 that embodies KCPL's Experimental Regulatory Plan provides a schedule for a rate case "filed with the Commission on February 1, 2008." KCPL filed Case No. ER-2009-0089 rate case on September 5, 2008, over seven months after the rate case filing date specified in the KCPL Experimental Regulatory Plan Stipulation and Agreement. There is no similar regulatory plan for Aquila; however, it chose to file tariff sheets also bearing August 5, 2009 effective dates.

21. In crafting these alternatively proposed procedural schedules, the Staff has endeavored to make them reasonable. In doing so the Staff consulted with various parties, and considered matters raised by Public Counsel, Midwest Energy Users' Association, Praxair, Inc., KCPL, Aquila, Inc., Trigen-Kansas City Energy

⁵ Section 393.150, RSMo. 2000 expressly applies to electrical corporations and Section 393.290, RSMo. 2000 makes 393.150 RSMo. 2000 applicable to heating companies as well.

Corporation and others. Among other factors the Staff considered the need to essentially contemporaneously process four separate revenue requirements (KCPL electric, Aquila electric L&P, Aquila electric MPS and Aquila steam), the times needed to get information from the Company for the true-up, review and analyze that information, and prepare testimony based on data from the 2007 calendar year test year; the September 30, 2008 update date, the true-up date, the time needed by the Commission for its deliberations and Orders, and holidays (particularly Washington's Birthday—February 16, 2009, Truman Day—May 8, 2009 and Memorial Day—May 25, 2009).

22. The proposed schedules are predicated on KCPL and Aquila providing to Staff and the other parties by no later than "Closed book true-up data date" specified auditable accounting information through the true-up date consisting of KCPL's and Aquila's standard monthly documentation—such as monthly operating reports, ledgers, supporting invoices—that assures each item being true-up has occurred in fact or is in service, has been booked, payment is recorded in KCPL's, or Aquila's, accounts payable system and is auditable. If that predicate proves false, then the proposed true-up and briefing schedules are impracticable. Further, under each schedule to be included in the true-up revenue requirement adjustment, invoices must have been processed to approve payment by the invoice cut-off date and received by the Staff by no later than the following day.

9. It is still Staff's experience in this case that it takes Companies over three weeks from the end-of-a-month period to provide updates to their investment, revenues, fuel and purchased power, payroll and other costs through the end of that end-of-month period.

10. The Commission's adoption of a January 20, 2009 date for Companies to notify the Commission of a commitment to a true-up date of March 31, 2009 was invited and requested by Companies in their October 29, 2008 pleading where they proposed alternative procedural schedules. In that pleading they proposed in **Attachment 1** a procedural schedule that incorporated the evidentiary hearing dates the Commission had scheduled in its September 12, 2008 orders directing filing and directing notice. If the Commission rejected that proposal, as an alternative, in **Attachment 2**, they proposed two other schedules—one based on a March 31, 2009 true-up date and

August 5, 2009 effective date of new rates and another based on an April 30, 2009 true-up date and September 5, 2009 effective date of new rates. The schedule with the March 31, 2009 true-up date and August 5, 2009 effective date of new rates was to be used unless Companies elected by January 20, 2009 to extend the true-up date and effective date of new rates to April 30, 2009 and September 5, 2009, respectively.

11. In particular, Companies stated in paragraph 10, “By no later than January 20, 2009 the Companies would file with the Commission a notification indicating whether they can commit to an accelerated March 31, 2009 true-up date” and in paragraph 11, “Delaying implementation of the new rates will result in a significant cost to the Companies, but it is an accommodation the Companies are willing to make (i) if the Commission determines it needs more time than provided in the Hearing Date Orders and (ii) the Companies cannot satisfy an accelerated March 31, 2009 true-up date.” Further, in their conclusion to that pleading they stated, “However, in the event the Commission concludes that it needs more time than provided in the Hearing Date Orders to deliberate and issue its orders in these cases, the Companies propose the adoption of the alternate schedules set forth in **Attachment 2** premised on the Companies’ notification by January 20, 2009 whether an accelerated March 31, 2009 true-up date is achievable.”

12. As reflected in the portion of the Commission’s Order Setting Procedural Schedules quoted in paragraph five above, the Commission rejected Companies’ proposed schedules based on the Hearing Date Orders—**Attachment 1**—instead ordering a schedule that gave the Commission more time, and Companies have notified the Commission in their March 2, 2009 status report and motion that a March 31, 2009 true-up date is not achievable.

Primary Recommendation

13. Now, having gotten the schedule they requested and elected, Companies seek to avoid their accommodation to the Commission by proposing first an isolated adjustment for Iatan 1 to April 30, 2009 while retaining a true-up date of March 31, 2009 for all other costs and revenues and, if the Commission rejects that proposal, an alternative of treating their March 2, 2009 status report and motion as if it satisfied the January 20, 2009 election to use an April 30, 2009 true-up date.

14. Staff believes the Commission should decline to afford any of the relief Companies request. Unlike acts of god or other events beyond the control of a utility, based on information Companies relayed to Staff and others on the afternoon of Friday, February 27, 2009, the event that damaged the new high-pressure turbine rotor shaft at Iatan 1 was not an unforeseen event beyond the control of Companies. ** _____

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15. Once again, KCPL seeks to “cherry pick” from the provisions of its Stipulation and Agreement (“Agreement”) in Case No. EO-2005-0329. It overstates its rights under that Agreement and ignores provisions in that Agreement which are inconvenient or contrary to the results it seeks. The Companies attach an affidavit from Michael W. Cline, Vice President, Investor Relations and Treasurer, Great Plains Energy Incorporated (“GPE”), addressing the negative financial impacts to GPE, KCPL, and GMO that a change in schedule would present when it has refused to provide and redacted information regarding topics such as Iatan 2, LaCygne 1, and wind projects that equally impact GPE’s, KCPL’s, and GMO’s financial positions. Thus, denying the Staff an opportunity to examine areas GPE, KCPL, and GMO wish to exclude from purview other than on their terms. KCPL asserts the Staff’s discovery is irrelevant.

16. Further, GMO seeks to “piggyback” on these overstated KCPL “rights.” In paragraph 5 of their status report and motion Companies state, “The Companies believe their proposal represents a reasonable compromise between (i) KCP&L’s right under the regulatory plan approved in Case No. EO-2005-0329 (“Regulatory Plan”) to include in this rate case plant in service as of April 30, 2009 and (ii) the other parties’ need for cost information in a timely manner.” Companies are referring to what is described as “Rate Filing #3 (2008 Rate Case)” in the Agreement, III.B.3.c.,

page 37. GMO seeks to “piggyback” on these overstated KCPL “rights” since GMO has no regulatory plan similar to the KCPL and Empire Experimental Regulatory Plans.

17. KCPL has no “right” under the Agreement to include in this rate case plant in service as of April 30, 2009. First, III.B.10.h on page 54 of the Agreement specifically provides:

This Agreement contains the entire generally-applicable agreements or arrangements of the Signatory Parties. There are no other generally-applicable agreements or arrangements that pertain to these matters. ***Silence in this Agreement on a particular topic or issue indicates that the Signatory Parties reached no agreement on the handling of that topic or issue.*** (Emphasis added.)

Second, the description of “Rate Filing #3 (2008 Rate Case)” in the Agreement does not contemplate an April 30, 2009 cutoff for plant in service, it contemplates a true-up cutoff of September 30, 2008—a full seven months earlier:

3. EXPECTED RATE CASES DURING REGULATORY PLAN

During the period beginning with the effective date of the Commission’s Order Approving Stipulation and Agreement, and ending on June 1, 2010, KCPL may file rate schedules incorporating increases at the times and under the conditions detailed below. KCPL is not required to file Rate Filing #2 and Rate Filing #3. However, KCPL agrees to file Rate Filing #1, and a rate case to include the investments related to the completion of Iatan 2. KCPL will not seek any additional rate increases during the Regulatory Plan, other than as specified below as Rate Filing ##1, 2, 3, and 4 unless at least one of the contingencies specified in Paragraph III.B.2.b applies.

If one or more of the investments specified in Paragraphs III.B.3.b-e is not included in a rate case filing, as specified herein, KCPL may include the investments in a later rate case filing. In such an instance, the Signatory Parties’ commitment not to take the position that the investments should be excluded from KCPL’s rate base will extend to the filing that includes such investments consistent with the “Infrastructure” subparagraph of each “Rate Filing” section immediately below. KCPL further commits to work to develop mutually agreeable procedures in these rates cases to streamline the rate case process.

Because of the magnitude of these investments and the length of time in the Regulatory Plan, KCPL may need to adjust the timing of the rate filings to reflect

additional information regarding the construction and timing of investments and other factors. KCPL and the Signatory Parties agree to work together to adjust the rate filing schedules to reflect these needs. (Emphasis added.)

(Agreement, III.B.3, pp. 29-30).

* * * *

c. RATE FILING #3 (2008 RATE CASE)

(i) *Schedule. Rate schedules with an effective date of January 1, 2009 may be filed with the Commission on February 1, 2008. The test year will be based upon a historic test year ending December 31, 2007, (initially filed with nine (9) months actual and three (3) months budget data), with updates for known and measurable changes, as of June 30, 2008, and with a true-up through September 30, 2008.* (Emphasis added.) On or about October 21, 2008, KCPL will file in a true-up proceeding a reconciliation as of September 30, 2008. The specific list of items to be included in the true-up proceeding shall be mutually agreed upon between KCPL and the Signatory Parties, or ordered by the Commission during the course of the rate case. However, the Signatory Parties anticipate that the true-up items will include, but not necessarily be limited to, revenues including off-system sales, fuel prices and purchased power costs, payroll and payroll related expenses, plant-in-service, depreciation and other items typically included in true-up proceedings before the Commission.

(ii) *Interventions.* Each of the Signatory Parties shall be considered as having sought intervenor status in the 2008 Rate Filing without the necessity of filing an application to intervene and KCPL consents in advance to such interventions. The Signatory Parties expect that the Commission's standard procedures and rules will be applicable to this rate filing including public notice, local public hearings and evidentiary hearings at appropriate times and places, and an opportunity for interested parties other than the Signatory Parties to seek to intervene.

(iii) *Revenue Computation Inputs.* KCPL will provide to Staff monthly billed kWh sales, revenues, customer and billing units aggregated by jurisdiction, by rate class (Small General Service, Medium General Service, Large General Service, Large Power Service, etc.), and by voltage level (primary, secondary, sub-transmission, etc.) for all rate classes. In addition, this data would be provided by usage period (read cycle) for the weather-sensitive groupings. This data would be provided for the nine (9) months of test year actual data that is available when KCPL files the case and for the other three (3) months of the test year as soon as the data is available.

(iv) The Signatory Parties agree not to file new or updated class cost of service studies or to propose changes to rate structures in Rate Filing #3.

(v) Infrastructure. The 2008 Rate Case will include prudent expenditures for the installation of an SCR facility, a Flue Gas Desulphurization ("FGD") unit and a Baghouse at Iatan 1; 100 MWs of wind generation; and the additions to transmission and distribution infrastructure identified in Appendix D that are in service prior to the agreed upon true-up date. The Signatory Parties agree that they will not take the position that these investments should be excluded from KCPL's rate base on the ground that the projects were not necessary or timely, or that alternative technologies should have been used by KCPL, so long as KCPL proceeds to implement the Resource Plan described herein (or a modified version of the Resource Plan where the modified plan has been approved by the Commission) and KCPL is in compliance with Paragraph III.B.1(o) "Resource Plan Monitoring." Nothing in this Agreement shall be construed to limit any of the Signatory Parties' ability to inquire regarding the prudence of KCPL's expenditures, or to assert that the appropriate amount to include in KCPL's rate base or its cost of service for these investments is a different amount (e.g., due to imprudent project management) than that proposed by KCPL.

(vi) Amortization Expense. The 2008 Rate Case will include an amortization expense of \$17 million on a Missouri jurisdiction basis, as may be adjusted upward or downward as set out in Paragraph III.B.1.i. Conditioned upon KCPL's continued performance pursuant to the Regulatory Plan, the Signatory Parties agree that they will not contest this amortization in the 2008 Rate Case. After the 2008 Rate Case, KCPL will continue to book this amortization annually, which shall continue until the Commission approves a change either upon agreement of the Signatory Parties made with due regard to KCPL's then existing situation, or in the course of a general rate proceeding as further set out in Paragraph III.B.1.i. Paragraph III.B.1.i does not preclude KCPL, the Staff, Public Counsel, or any other party from requesting that this amortization be directed toward specific plant accounts or from requesting additional changes in depreciation rates that may result from depreciation studies. Any such accumulated amortization balance booked pursuant to this Agreement will be used as an offset to rate base in future rate proceedings of KCPL.

(vii) Demand Response, Efficiency and Affordability Programs. The 2008 Rate Case will also include the amortization related to the Demand Response, Efficiency and Affordability Programs, as more fully described in Paragraph III.B.5 below. The Signatory Parties agree not to contest the continuation of this amortization in the 2008 Rate Case on any basis other than KCPL's failure to prudently implement the Demand Response, Efficiency and Affordability Programs described in Paragraph III.B.5 below.

(viii) Special Contracts. KCPL agrees that for ratemaking determinations, Praxair, Ford and other special contracts will be treated as if they were paying the full generally applicable tariff rate for service from KCPL and other provisions in special contracts will not affect rate base for regulatory purposes.

(Agreement, III.B.3.c., pp. 37-41).

18. Despite the provision in III.B.3 on page 30 of the Agreement that KCPL and the signatories to the Agreement are to work together to adjust the timing of the rate filings, KCPL unilaterally adjusted the filing of its rate case based on a 2007 test year from February 1, 2008 to September 5, 2008 when the Agreement specified a February 1, 2008 filing date.

19. Based on all the foregoing Staff recommends the Commission not change the procedural schedules, i.e., continue with a March 31, 2009 true-up date and without any later isolated adjustments.

Secondary Recommendation

20. If the Commission declines to adopt Staff's recommendation to not change the procedural schedules, the Commission should consider the paragraphs following.

21. During this case Staff's perception of the costs Companies are relying on for driving rates in his case have changed substantially at different points in the case. For example, KCPL filed with off-system sales of about ** _____ ** in its direct case based on a forecast June 2008 to July 2009 period. Based on information from KCPL that number changed to about ** _____ ** when, at Staff's request, KCPL updated its case to September 30, 2008. During the case Companies have engaged in similar movements of substantial dollar amounts regarding the inclusion of Iatan 1 and Iatan 2 common plant costs in plant cost for Iatan 1.

22. While Companies have responded to numerous Staff data requests, there are data requests to which Companies have not provided the information requested based on assertions of relevance and privilege. Staff is pursuing resolution of those objections with Companies. If Staff is unable to reach resolution of those objections with Companies, Staff intends to pursue the objections through the Regulatory Law Judge and, if necessary, the Commission itself. Staff notes these objections here because they are relevant to the procedural schedules. At this late stage in these rate cases Staff objects to proposals that would expand the scope of Staff's review without providing additional time to perform that review or that would reduce the time available to Staff to complete its review, in part due to the difficulties Staff has encountered in obtaining information from Companies through data requests.

23. Entirely apart from the inappropriateness of Companies' proposal to modify the procedural schedules, there is a lack of transparency and cooperation by Companies that causes Staff to be unwilling to agree to increase the scope of its work at this very late stage in these proceedings. Among their objections Companies object to the relevance of information about KCPL's management of the Iatan 2 project and Iatan 2 costs. Although KCPL is not seeking to place Iatan 2 costs into rate base in these cases, there is the question of whether costs properly attributable to Iatan 2 have been included as Iatan 1 costs. Because KCPL is building facilities at Iatan that will serve both Iatan 1 and Iatan 2 – to the extent common plant is being or should be treated as Iatan 1 costs, Iatan 2 costs information is relevant to assure that only costs properly attributable to Iatan 1 are included in this case for setting rates. In addition, since Iatan 2 costs increase KCPL's debt, and thereby affect KCPL's credit ratios / metrics, Iatan 2 costs impact and are therefore relevant to the

additional amortizations available to KCPL under the Agreement. Finally, relating to Iatan 2, the Agreement provides, in part, at III.B.1.i., pages 18-19:

i. Additional Amortizations To Maintain Financial Ratios

In Re Application of Kansas City Power & Light Company For An Order Authorizing Its Plan to Reorganize Itself Into a Holding Company Structure, Case No. EM-2001-0464, 10 Mo.P.S.C.3d 394 (2001), KCPL agreed to maintain its debt at investment grade. The Signatory Parties agree that it is desirable to maintain KCPL's debt at investment grade rating during the period of the construction expenditures contained in this Agreement. KCPL understands it has the responsibility to take prudent and reasonable actions in an effort to achieve the goal of maintaining its debt at investment grade levels. KCPL understands that it is incumbent upon it to take prudent and reasonable actions that do not place its investment grade debt rating at risk. KCPL further agrees that any negative impact from its failure to be adequately insulated from the Great Plains Energy, Inc. ("GPE") business risks as perceived by the debt rating agencies will not be supported by its Missouri jurisdictional customers. ***KCPL recognizes its obligation to continue to prudently manage costs, continuously improve productivity, and maintain service quality during the Regulatory Plan. KCPL further recognizes that any finding by the Commission that KCPL has failed to prudently manage its costs, continuously improve productivity, and maintain service quality during the Regulatory Plan will negate the obligation of the Signatory Parties contained in this section.*** (Emphasis added).

The non-KCPL Signatory Parties commit to work with KCPL to ensure that based on prudent and reasonable actions, KCPL has a reasonable opportunity to maintain its bonds at an investment grade rating during the construction period ending June 1, 2010. As part of this commitment, the non-KCPL Signatory Parties agree to support the "Additional Amortizations to Maintain Financial Ratios", as defined in this section and related appendices, in KCPL general rate cases filed prior to June 1, 2010. The "Additional Amortization to Maintain Financial Ratios" will only be an element in any KCPL rate case when the Missouri jurisdictional revenue requirement in that case fails to satisfy the financial ratios shown in Appendix E through the application of the process illustrated in Appendix F.

Staff contends that the above language in the Agreement regarding KCPL committing "to prudently manage costs, continuously improve productivity" directly relates to the construction of Iatan 2 and, therefore, KCPL should not be permitted to prevent the Staff from reviewing Iatan 2 documents in the context of the present case, since the present case is part of the Agreement.

24. KCPL has raised objections to other Staff data requests which are unresolved, and which KCPL has attempted to address in a fashion by publicly announcing on February 25, 2009 that it would not seek recovery in Missouri or Kansas of \$3.6 million of expenses, including \$200,000 for Worlds of Fun tickets provided to employees, \$188,00 for golfing fees and tickets to Chiefs and Royals games, \$5,900 for meals at Chiefs games, \$500,000 for expense accounts of senior executives, \$572,000 for movie tickets, gift cards and flowers and KCPL's 50 cents for every \$1 that customers voluntarily contribute to the Dollar-Aide program. (Kansas City Star, February 25, 2009).

25. There are also unresolved objections to Staff data requests for copies of all reports and presentations Schiff Hardin provided to KCPL's senior management, Executive Oversight Committee and project personnel, and not all such documents have been made available to the Staff. KCPL has asserted attorney-client privilege and attorney work product privilege respecting portions of reports previously provided to the Staff in unredacted format in Case No. EM-2007-0374, the case where the Commission authorized Great Plains Energy to acquire Aquila. Because the information now redacted was included in the documents to which Staff was provided access for review in Case No. EM-2007-0374, any attorney-client or attorney work product privileges KCPL may have had has been waived regarding these portions of those documents not previously redacted. Companies have also asserted attorney-client privilege in response to Staff data requests for information that is the basis for costs they include in their direct cases for setting rates. As a consequence, Companies have waived the privilege. *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n*, 562 S.W.2d 688, 694-95, 696 (Mo.App. St.L.1978); *State ex rel. Southwestern Bell*

Telephone Co. v. Public Serv. Comm'n, 645 S.W.2d 44, 55 (Mo.App. W.D. 1982). While Staff recommends the Commission not modify the procedural schedules in these cases, should the Commission determine to allow the Iatan 1 environmental improvements as an isolated adjustment after March 31, 2009 or extend the true-up date to April 30, 2009, Staff recommends the Commission impose the following conditions on that relief:

- a) Extend the target new tariff rate sheets effective date to September 5, 2009
- b) Agreement of Companies that Iatan 1 costs that exceed the base costs will be included in rates interim subject to refund based on a true-up of costs in Companies' next electric rate case;
- c) To the extent Companies are shown to have overstated Iatan 1 costs authorized as of April 30, 2009, then if any of those overstated costs are subsequently found to be imprudent, the Companies will be deemed to have violated the Commission's order in Case No. ER-2009-0089.
- d) Depreciation reserve attributable to Iatan 1 accrued post March 31, 2009 be included in setting rates;
- e) Deferred income tax reserve attributable to Iatan 1 accrued post March 31, 2009 be included in setting rates;
- f) Environmental credits for energy production from Iatan 1 be applied as an offset to the Iatan 1 plant balance;
- g) The value of power generated by Iatan 1 net of variable costs be credited to the costs to be placed in service.

True-up Scope

26. As Staff stated in paragraph 11 of its October 29, 2008 pleading where it proposed procedural schedules in these cases:

True-up testimony should be limited to changes in quantification of new data from applying methodologies used by the party filing the true-up testimony when that party developed direct, rebuttal or surrebuttal testimony in this case, and shall not introduce changes in methodology. The following items should be true-up as of the true-up date:

RATE BASE:

- (1) Plant-in-service;
- (2) Depreciation reserve;
- (3) Deferred taxes;
- (4) Fuel inventories (oil and coal);
- (5) Related cash working capital;
- (6) Materials and supplies;
- (7) Prepayments;
- (8) Customer advances for construction, and contributions in aid of construction;
- (9) Customer deposits;
- (10) Income tax offsets; and
- (11) Interest expense offset.

CAPITAL STRUCTURE:

- (1) Rate of return—embedded cost of long-term debt, short-term debt and preferred stock (excludes return-on-equity);
- (2) Capital structure.

INCOME STATEMENT:

- (1) Revenues, customer count, and kWh sales to account for customer growth;
- (2) Margin from off-system sales;
- (3) Uncollectibles;
- (4) Payroll – employee levels, current wage rates, payroll-related benefits and payroll taxes;
- (5) Fuel prices for gas, oil, SO₂ allowances and freight;
- (6) Purchased power prices;
- (7) System loads;
- (8) Fuel and purchased power expense;
- (9) Rate case expense and MoPSC assessment;
- (10) Lease cost;
- (11) Property insurance;
- (12) Depreciation expense;
- (13) Property taxes – if applicable and appropriate;
- (14) Income tax effects; and
- (15) Allocation factors.

WHEREFORE the Staff, in response to the status report and motion to extend period to demonstrate compliance with certain in-service criteria of Kansas City Power & Light Company and

KCP&L Greater Missouri Operations Company, recommends the Commission not modify the procedural schedules in these cases; however, should the Commission determine to allow Iatan 1 improvements as an isolated adjustment after March 31, 2009 or extend the true-up date to April 30, 2009, Staff recommends the Commission impose the conditions set forth above.

Respectfully submitted,

/s/ Nathan Williams

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 6th day of March 2009.

/s/ Nathan Williams