BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service	))))	Case No. ER-2012-0174

MOTION TO STRIKE PRE-FILED TESTIMONY AND REJECT TARIFFS AND MOTION FOR EXPEDITED TREATMENT

COMES NOW the Office of the Public Counsel ("OPC") and the Midwest Energy Consumers' Group ("MECG") and for their Motion to Strike Portions of the Pre-Filed Direct Testimony and Reject Tariffs of Kansas City Power & Light Company ("KCPL") respectfully state as follows:

I. EXECUTIVE SUMMARY

KCPL committed, as part of its 2005 Regulatory Plan, to treat ***all*** off-system sales as an offset to retail rates. In its Order approving that Regulatory Plan, the Commission noted "that KCPL specifically agrees not to propose any adjustment that would remove any portion of its off-system sales from its revenue requirement in any rate case." This commitment remains effective so long as the costs of Iatan 2 are "included in KCPL's rate base."

Now, in the first case following the completion of Iatan 2, KCPL seeks to violate this commitment. Specifically, KCPL proposes to implement an Interim Energy Charge which unnecessarily includes a provision for the sharing of off-system sales.

Given the obvious violation of its previous commitment and using the guidance of the Commission's Order in the 2006 Empire rate proceeding, OPC and MECG ask that

the Commission strike those portions of KCPL's testimony and tariffs which violate KCPL's commitments from the 2005 Regulatory Plan.

II. KCPL REGULATORY PLAN PRECLUDES THE SHARING OF OFF-SYSTEM SALES MARGINS

In 2004, at the request of KCPL, the Commission opened a docket to review the future supply and pricing of the electric service provided by KCPL.[1] After numerous meetings with various stakeholders, a Stipulation and Agreement was filed. This Stipulation provided, among other things, the regulatory framework by which KCPL would build the Iatan 2 generating station. Included in the Stipulation was the following provision concerning off-system sales:

> KCPL agrees that off-system energy and capacity sales revenues and related costs will continue to be treated above the line for ratemaking purposes. KCPL specifically agrees not to propose any adjustment that would remove any portion of its off-system sales from its revenue requirement determination in any rate case, and KCPL agrees that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process.[2]

Recognizing the opposition of Sierra Club and the Concerned Citizens of Platte County, the Commission instituted contested case procedures including an evidentiary hearing. At the evidentiary hearing, it became apparent to the Commission that the off-system sales provision did not completely reflect the parties' agreement as to the length of time this provision would remain in effect. As such, the Commission ordered the parties "to submit language reflecting the off-system sales agreements."[3]

The following day, the Signatory Parties filed their response in which they amended the relevant language of the off-system sales provision. That provision now

[1] See, Case Nos. EO-2004-0577 and EW-2004-0596.
[2] *Stipulation and Agreement*, Case No. EO-2005-0329, filed March 28, 2005, at page 22.
[3] *Order Directing Filing*, Case No. EO-2005-0329, issued July 25, 2005.

clarifies that KCPL agrees that "**all**" off-system sales revenues shall be used in establishing retail rates for as long as the related investments are included in rate base.

> KCPL agrees that off-system energy and capacity sales revenues and related costs will continue to be treated above the line for ratemaking purposes. KCPL specifically agrees not to propose any adjustment that would remove any portion of its off-system sales from its revenue requirement determination in any rate case, and KCPL agrees that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process. KCPL agrees that all of its off-system energy and capacity sales revenue will continue to be used to establish Missouri jurisdictional rates as long as the related investments and expenses are considered in the determination of Missouri jurisdictional rates.[4]

Ultimately, the requirement that "all" off-system sales revenues be reflected in the establishment of Missouri rates proved critical in the Commission's decision to approve the Stipulation. "The Commission finds that the treatment of off-system sales is an **important** part of its conclusion that the Proposed Regulatory Plan is in the public interest."[5]

The absolute clarity of this commitment is not only reflected in the stipulation and the Commission's Order, it is also reflected in several of KCPL's own pleadings and statements in that case.

►On April 7, 2005, KCPL filed the Direct Testimony of Chris Giles in support of the Stipulation and Agreement. In that testimony, Mr. Giles states:

> KCPL agrees that off-system energy and capacity sales revenues and related costs will continue to be treated above the line for ratemaking purposes. KCPL will not propose ***any*** adjustment that would remove ***any*** portion of its off-system sales from its revenue requirement determination in ***any*** rate case, and KCPL agrees that it will not argue that these

[4] *Signatory Parties' Response to Order Directing Filing*, Case No. EO-2005-0329, filed July 26, 2005, at pages 2-3.
[5] *Report and Order*, Case No. EO-2005-0329, issued July 28, 2005, at page 28 (emphasis added).

> revenues and associated expenses should be excluded from the ratemaking process.[6]

►On June 2, 2005, KCPL reiterated this broad commitment. "KCPL specifically agrees not to propose any adjustment that would remove any portion of its off-system sales from its revenue requirement determination in any rate case. . . "[7]

►Similarly, on June 15, 2005, KCPL again avowed the requirement to reflect off-system sales revenues in Missouri rates. Mr. Giles "will also state that revenue from off-system sales . . . will continue to be treated 'above the line' thus extending current benefits that ratepayers receive."[8]

►Finally, this commitment was repeated by KCPL's counsel at the Commission's evidentiary hearing.

> Mr. Dottheim: Could you please provide what you understand have been the discussions and the understanding?
>
> Mr. Schallenburg: ***The term would be tied to as long as the cost from Iatan were included, excuse me, Iatan II were included in rates***. That would be the term of the off-system sales provision that the off-system sales would be included in rates consistent with the treatment of Iatan II costs.
>
> Mr. Fischer (on behalf of KCPL): Your Honor, and I can stipulate that ***that is Kansas City Power & Light Company's understanding***, with the proviso that it is also our understanding there will be a similar provision in the regulatory plans, and we're expecting that to come out similarly.[9]

As is clear from the previous citations, KCPL committed to continue to reflect all off-system sales revenues in Missouri retail rates. As KCPL's Vice President of Regulatory indicated, "KCPL will not propose ***any*** adjustment that would remove ***any*** portion of its off-system sales from its revenue requirement determination in ***any*** rate

[6] *Direct Testimony of Chris Giles*, Case No. EO-2005-0329, filed April 7, 2005, at page 21.
[7] *Position Statement of Kansas City Power & Light Company*, Case No. EO-2005-0329, filed June 2, 2005, at page 19.
[8] *Prehearing Brief of Kansas City Power & Light Company*, Case No. EO-2005-0329, filed June 15, 2005.
[9] Tr. 1037-1038, Case No. EO-2005-0329, July 12, 2005 (emphasis added).

case."[10] Further, this commitment outlasted the express term of the Regulatory Plan and remained in effect so long as the investment of Iatan 2 remained in rates.

III. DESPITE THE PROHIBITION IN THE REGULATORY PLAN, KCPL'S TESTIMONY EXPRESSLY ASKS TO REMOVE A PORTION OF OFF-SYSTEM SALES FROM THE REVENUE REQUIREMENT AND TREAT IT BELOW THE LINE

It now appears that the commitment not to propose "***any*** adjustment" that would remove "***any*** portion" of off-system sales in "***any*** rate case" was simply a matter of expedience for KCPL. Having already received the entirety of its benefits under the deal, KCPL, in its first opportunity following the completion of Iatan 2, now wants to renege on the very provisions used to entice the other parties into signing the Regulatory Plan. Where it once committed to allow ratepayers to keep the entirety of all off-system sales revenues, KCPL now seeks to "share" in those revenues. Such sharing amounts, by any stretch of the imagination, as an attempt to "remove" a portion of off-system sales from the revenue requirement determination.

In fact, KCPL's repudiation of its previous commitments from the Regulatory Plan has been embraced by its Chief Executive Officer. "The Company is also requesting an interim energy charge ("IEC") ***which includes*** a proposal to contain the off-system sales margin variances above or below the amount included in the rates established in this case with some ***specific sharing properties***."[11]

While embraced by the Chief Executive Officer, the actual proposal to treat a portion of off-system sales below the line is contained in the testimony of KCPL's

[10] *Direct Testimony of Chris Giles*, Case No. EO-2005-0329, filed April 7, 2005, at page 21.
[11] *Direct Testimony of Terry Bassham*, Case No. ER-2012-0174, filed February 27, 2012, at page 8.

Director of Regulatory Affairs. "If the OSS Margin is greater than the 60th percentile, the Company ***would retain 25% of the amount of Margin***."[12]

While couched in terms of sharing, it is clear that KCPL's request amounts to an attempt to remove a portion of off-system sales from the Missouri revenue requirement. Such a request amounts to a blatant violation of the previous commitment not to "propose ***any*** adjustment that would remove ***any*** portion of its off-system sales from its revenue requirement determination in ***any*** rate case."[13]

IV. RECENT COMMISSION ORDERS INDICATE THAT THE PROPER REMEDY, WHEN A UTILITY REQUESTS TREATMENT THAT IS PRECLUDED BY A STIPULATION, IS A MOTION TO STRIKE PRE-FILED TESTIMONY

In 2006, the Commission addressed a similar situation to that pending today. Despite a previous commitment in a stipulation not to request a fuel adjustment clause during the pendency of its Interim Energy Charge, Empire District Electric violated the specific terms of its previous commitment and requested the fuel adjustment clause. As the Commission found, "Empire is precluded from requesting the use of another fuel adjustment mechanism during the period in which the IEC is in effect."[14] Recognizing that Empire's request for a fuel adjustment clause amounted to a violation of its previous commitment, the Commission required Empire to "remove from its pleadings and other filings in this case the request it consented not to make."[15]

Ultimately, despite the clarity of the Commission's Order, Empire failed to comply with the requirement to remove its request from its pleadings. Following up on a

[12] *Direct Testimony of Tim Rush*, Case No. ER-2012-0174, filed February 27, 2012, at pages 12-13.
[13] *Direct Testimony of Chris Giles*, Case No. EO-2005-0329, filed April 7, 2005, at page 21.
[14] *Order Clarifying Continued Applicability of the Interim Energy Charge*, Case No. ER-2006-0315, issued May 2, 2006, at page 3.
[15] *Id.*

subsequent motion from customers, the Commission rejected certain tariff sheets and struck certain testimony that was not in compliance with Empire's previous commitment.[16]

Thus, the Commission has previously found that the appropriate remedy, when a utility requests treatment that is contrary to previous Stipulation commitments, is to strike the offending portions of the testimony and to strike those tariffs sheets that are in violation of the utility's commitment.

V. SPECIFIC PORTIONS OF TESTIMONY TO BE STRICKEN

In light of the Commission's guidance from the 2006 Empire proceeding, MECG requests that the Commission reject those KCPL tariffs and strike that testimony which is contrary to KCPL's previous commitment not to "propose any adjustment that would remove any portion of its off-system sales from its revenue requirement determination in any rate case."[17]

Specifically, OPC and MECG ask that the Commission **reject** KCPL's proposed rate schedule: IEC (Interim Energy Charge) – PSC MO. No. 7, Second Revised Sheet Nos. 24 and 24A.

Furthermore, OPC and MECG ask that the Commission **strike** the following testimony:

Bassham Direct Testimony, page 8, lines 20-22.

Rush Direct Testimony, page 12, line 17 through page 13, line 5.

Rush Direct Testimony, page 14, lines 1 through 13.

Rush Direct Testimony, Schedule TMR-1.

[16] See, *Order Rejecting Tariffs and Striking Testimony*, Case No. ER-2006-0315, issued June 15, 2006.
[17] *Direct Testimony of Chris Giles*, Case No. EO-2005-0329, filed April 7, 2005, at page 21.

Ives Direct Testimony, page 4, lines 20-23.

Ives Direct Testimony, page 9, lines 5-6.

Ives Direct Testimony, page 21, lines 21-23.

Schnitzer Direct Testimony, page 3, lines 7-8 and 18-20.

Schnitzer Direct Testimony, page 5, lines 2-9.

Schnitzer Direct Testimony, page 33, line 1 through page 34, line 14.

VI. MOTION FOR EXPEDITED TREATMENT

Pursuant to 4 CSR 240-2.080(14), OPC and MECG request that the Commission act on this request in an expedited manner. In support of this request, OPC and MECG point out that by acting in an expeditious fashion, the Commission may save the parties the significant cost and effort of issuing discovery, prefiling testimony, conducting cross-examination and filing briefs on an issue that should not be heard by the Commission. With this in mind, and recognizing that direct testimony is due in this matter on August 2, OPC and MECG ask that KCPL be ordered to respond to this Motion on or before June 15 and that the Commission grant this motion on or before July 1, 2012.

OPC and MECG are filing this pleading as soon as is reasonably practicable. While KCPL filed its direct testimony on February 27, the nature of KCPL's violation has only become recently apparent to counsel. While counsel would like to be able to review testimony immediately upon filing, such review is necessarily delayed by other commitments. In this case, undersigned counsel have been detained by the press of other work in this jurisdiction as well as any other states. Specifically, counsel has been involved with the pending GMO and Ameren MEEIA filing, as well as the pending

AmerenUE and GMO rate cases. Furthermore, MECG counsel has been involved in the recently completed Westar rate proceeding in Kansas. As such, this pleading has been filed as soon as reasonably practicable.

VII. CONCLUSION

As has been demonstrated, KCPL previously committed, in its Regulatory Plan, not to "propose any adjustment that would remove any portion of its off-system sales from its revenue requirement determination in any rate case."[18] This commitment was to outlast the remainder of the KCPL Regulatory Plan and would remain in effect "as long as the related investments and expenses are considered in the determination of Missouri jurisdictional rates."[19] Recognizing that KCPL continues to seek recovery of the related investments and expenses, the commitment to include all off-system sales in the revenue requirement is still effective.

Despite KCPL's commitment, it now seeks to remove a portion of off-system sales from the revenue requirement and have that portion go directly to shareholders. Such a request is in direct violation of the Regulatory Plan provision. In a prior case, the Commission has found that the proper remedy to such a request is to reject the offending tariffs and strike all testimony that is contrary to the utility's commitment. With this in mind, OPC and MECG ask that the Commission reject KCPL's Interim Energy Charge Tariff as well as the offending testimony as more specifically set forth herein.

WHEREFORE, OPC and MECG respectfully request that the Commission act on this Motion on or before July 1, 2012 and strike KCPL's tariffs and testimony as set forth herein.

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[18] *Direct Testimony of Chris Giles*, Case No. EO-2005-0329, filed April 7, 2005, at page 21.
[19] *Signatory Parties' Response to Order Directing Filing*, Case No. EO-2005-0329, filed July 26, 2005, at pages 2-3.

Respectfully submitted,

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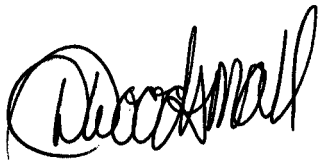

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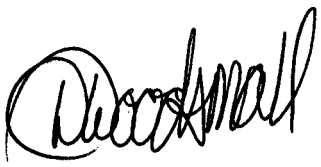
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



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Dated: May 25, 2012